UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 19-23649-rdd

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In the Matter of:

PURDUE PHARMA L.P.,

Debtor.

- x

United States Bankruptcy Court

300 Quarropas Street, Room 248

White Plains, NY 10601

November 17, 2020

10:09 a.m.

B E F O R E :

HON ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

HEARING re Notice of Agenda / Agenda for November 17, 2020 Hearing

HEARING re Motion to Authorize / Motion of Debtors for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (ECF #1674)

HEARING re Objection to Motion For Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (related document(s)1674) filed by Paul Kenan Schwartzberg on behalf of United States Trustee (ECF #1708)

HEARING re Objection to Motion (related document(s)1674) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1709)

HEARING re Memorandum of Law In Support of Ad Hoc Committee on Accountability's Objection to Debtors' Motion to Pay Bonuses (related document(s)1674) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1710)

HEARING re Debtors' Omnibus Reply in Support of Motion of Debtors for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (related document(s)1674) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #1742)

Debtors Supplemental Reply in Support of Motion of Debtors for Entry of an Order Authorizing Implementation of a Key Employee Incentive Plan and a Key Employee Retention Plan (related document(s)1674) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #1960)

Debtors Supplemental Statement in Support of Motion of Debtors for Entry of an Order Authorizing Implementation of A Key Employee Incentive Plan and A Key Employee Retention Plan (related document(s)1674) filed by Eli J. Vonnegut on behalf of Purdue Pharma L.P. (ECF #1847)

Statement / Debtors Statement Regarding Motion to Confirm that Payment by the Sackler Families under Settlement with the United States Department of Justice is not Prohibited by this Court (related document(s)1833)

Statement Regarding and Limited Objection to Notice by the Sackler Families of Settlement with the United States Department of Justice and Motion to Confirm that Payment by the Sackler Families Under Settlement with the Department of Justice is not Prohibited by this Court (related document(s)1833) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #1856)

Objection to Motion (related document(s)1833) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1891)

Further Statement Regarding Notice by the Sackler Families of Settlement with the United States Department of Justice and Motion to Confirm that Payment by the Sackler Families under Settlement with the Department of Justice Is Not Prohibited by this Court (related document(s)1856, 1833) filed by Ira S. Dizengoff on behalf of Ad Hoc Group of Non-Consenting States, The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #1893)

Omnibus Reply in Further Support of Motion to Confirm That Payment by The Sackler Families Under Settlement With The United States Department of Justice is Not Prohibited by This Court ([related documents 1833, 1891, 1893]) filed by Gerard Uzzi on behalf of The Raymond Sackler Family (ECF #1951)

Debtors' Statement Regarding Motion to Confirm that Payment by the Sackler Families under Settlement with the United States Department of Justice is not Prohibited by this Court (related document(s)1833) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #1909)

Letter regarding how the Government intends to use the $225 million that would be paid to the United States in its settlement agreement with the Sackler family Filed by Lawrence Fogelman on behalf of United States of America (ECF #1942)

Motion to Approve Compromise / Motion of Debtors Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Settlements Between the Debtors and the United States filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #1828)

Objection to Debtors' Motion to Approve Settlement with the United States (related document(s)1828) filed by Paul A. Rachmuth on behalf of Ad Hoc Committee on Accountability (ECF #1911)

Opposition to Debtors' Motion to Approve Settlement with United States (related document(s)1828) filed by Daniel Walfish on behalf of Bankruptcy Professors as Amici Curiae (ECF #1913)

OBJECTION OF THE AD HOC GROUP OF NON-CONSENTING STATES TO THE MOTION OF DEBTORS PURSUANT TO 11 U.S.C. § 105 AND FED. R. BANKR. P. 9019 AUTHORIZING AND APPROVING SETTLEMENTS BETWEEN THE DEBTORS AND THE UNITED STATES (related document(s)1828) filed by Andrew M. Troop on behalf of Ad Hoc Group of Non-Consenting States (ECF #1914)

Limited Objection of the Ad Hoc Group of Individual Victims to Motion of Debtors Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Settlements Between the Debtors and the United States (related document(s)1828) filed by J. Christopher Shore on behalf of Ad Hoc Group of Individual Victims of Purdue Pharma L.P. (ECF #1916)

Debtors' Omnibus Reply in Support of the Motion of the Debtors' Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Settlements between the Debtors and the United States (related document(s)1828) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #1962)

The Official Committee of Unsecured Creditors' Statement Regarding Motion of Debtors Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Settlements Between the Debtors and the United States and Requests for Certain Clarifications in the Proposed Form of Order Approving the Same (related document(s)1828) filed by Ira S. Dizengoff on behalf of The Official Committee of Unsecured Creditors of Purdue Pharma L.P., et al. (ECF #1920)

Letter to Judge Drain received by e-mail on 11-11-20, re: Ad Hoc on Accountability's Objection to Purdue's

Motion to Authorize and Approve settlements between Purdue and The United States (filed by Mr. Dan Schneider, "The Pharmacist", President, Tunnel of Hope) (ECF #1934)

Debtors' Motion for Leave to Exceed the Page Limit in Filing Omnibus Reply in Support of Motion Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Settlements Between the Debtors and the United States (related document(s)1962) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #1963)

Notice of Filing of Revised Proposed Order Regarding the Motion of Debtors Pursuant to 11 U.S.C. § 105 and Fed. R. Bankr. P. 9019 Authorizing and Approving Settlements Between the Debtors and the United States (related document(s)1828) filed by Marshall Scott Huebner on behalf of Purdue Pharma L.P. (ECF #1966)

Transcribed by: Sonya Ledanski Hyde

A P P E A R A N C E S :

DAVIS POLK & WARDWELL LLP
Attorneys for the Debtor
450 Lexington Avenue
New York, NY 10017

BY: MARSHALL HUEBNER (TELEPHONICALLY)

AKIN GUMP STRAUSS HAUER & FELD LLP
Attorneys for the Creditors Committee
399 Park Avenue
New York, NY 10022

BY: ARIK PREIS

PILLSBURY WINTHROP SHAW PITTMAN LLP
Attorneys for Ad Hoc Non-Consenting States
31 West 52nd Street
New York, NY 10019

BY: ANDREW TROOP (TELEPHONICALLY)

P R O C E E D I N G S

THE COURT: Good morning. This is Judge Drain. We are here today in In re Purdue Pharma L.P., et al. This is a completely telephonic hearing. You should identify yourself and your client the first time you speak. It's a good idea to do that thereafter also so that the court reporter can be clear about your name relating to your voice.

There is one authorized recording of the matters on the calendar today. It's taken by Court Solutions. Court Solutions provides a copy to our clerk's office on a daily basis. If you want to have a transcript of today's hearing, you should contact the clerk's office to arrange for the production of one. Because this is a telephonic hearing, you should keep your phone on mute unless of course you are speaking.

So with that introduction, I have the agenda for today's hearings. There are three matters on the agenda, the remaining portion of the key employee incentive plan motion, the adjourned hearing on the motion by the Sackler family to confirm that their payment under their settlement with the Department of Justice is not prohibited by the Court's preliminary injunction order, and finally, the Debtor's motion to approve the Debtor's settlement with The United States. So I'm happy to go down the agenda in that

order.

MR. HUEBNER: Thank you, Your Honor. Can the Court hear me clearly?

THE COURT: Yes. Fine, thanks.

MR. HUEBNER: Good morning, Your Honor, and good morning to everyone who is on the line in these obviously continuously complicated times. For the record, I am Marshall Huebner of Davis Polk & Wardwell LLP on behalf of Purdue Pharma and its 22 subsidiaries, the Debtors in these Chapter 11 cases.

Your Honor, before we turn to the agenda and the three items that are on it, two very quick key updates, as is traditional in large cases, including this one.

First, the monitor's third report was filed yesterday, but in the flurry of paper, it may not have reached the Court's or others' attention. We are pleased that Secretary Vilsack again found no instance of non-compliance with any of the terms of the voluntary self-injunction, including the broad self-imposed ban on promotion. Secretary Vilsack again noted that the Debtors have been cooperative throughout his review process.

The monitor's third report sets forth the extensive and successful steps that the company has taken to comply with all of the recommendations made in his first and second reports as well as the company's continued compliance

with the recommendations made in his first and second reports.

In his third report, Secretary Vilsack made additional thoughtful recommendations that relate to the company's suspicious order monitoring program. The company has agreed to implement all of his recommendations. As it has done over the past nine months, the company will continue to provide full cooperation to the monitor and assist him fully with his ongoing work.

So, Your Honor, as you surely remember, because in fact it was your idea, it wasn't even relief that anybody asked for, this has now been in place really almost for the full length of these cases. And it's certainly the Debtor's hope, trust, and expectation that exactly as the Court envisioned, having a personage of impeccable credentials and broad experience deeply involved and watching all that is going on at the Debtors with respect to the ambit of the self-injunction, it is important and critical for many public policy and other reasons. Candidly, I wonder personally if all opioids shouldn't be sold with something along these lines.

Number two, Your Honor, as presaged to you a few days ago in a written submission, the Debtors have fully resolved the UCC and non-consenting states' motions. Actually, I think they were technically the UCC's motions to

compel the production of privileged documents for the Debtors as well as the Debtor's cross-motion for a protective order seeking to set clear and distinctive parameters over any remaining diligence and discovery as to the Debtors.

The settlement is reflected in the stipulation we filed on the docket on Sunday and is another important milestone in this case for at least two reasons. First, because the stipulation provides for the production of thousands of documents to the UCC on a common-interest basis of privileged documents that go to the very core of the diligence exercise, including both privileged documents relating to transfers of value from the Debtors to the Sacklers over many years and literally thousands of privileged communications on a broad array of topics that were sent to or from Purdue and its affiliates to the Sacklers on a wide variety of topics. This resolution was agreed to to provide mediation parties with further confidence that they are negotiating with the relevant facts in hand.

Your Honor, let me be very clear. The Debtors believed and continue to believe that their prior approach with respect to privileged documents was and continues to be entirely proper, and we absolutely also understand and agree that others had a different view and wanted access to

privileged documents. And it's critical that we're not actually waiving privilege, we're just settling all these issues.

Why are we doing it? Because we think it's in the best interest of the case. Not because, like the Committee and UCC, we were not very comfortable with having our day in court in front of you. In fact, we were quite comfortable. But the real issue is how do we move these cases forward. And it was our view that providing these thousands of privileged documents on very core topics would significantly facilitate and accelerate the Sackler-focused mediation.

The second important element in the stipulation, Your Honor, is that it brings us to the endpoint of discovery against the Debtors. Your Honor has made clear at virtually every hearing your view on the diligent type of exercise that we have been engaging in, and we are all aware of the cost to the estate on all sides.

Whatever their differences in view might have been, the Debtors, the UCC, and the non-consenting states have now fully agreed to the remaining scope of discovery as to the Debtors. The Sackler issues are still outstanding, and the Debtors, as the Court knows, have never once interposed themselves in between other parties seeking discovery or the Sacklers and the Sacklers. The conclusion of the Debtors (indiscernible) discovery, its conclusion is

now on the very near-term horizon.

So, once again, as is always the case in all mega cases, let alone one of incredibly complexity and social import, most of the work goes on below the water line. And things are proceeding literally every single day, and most cases I think quite productively.

Your Honor, that brings us to Item 1 on the agenda with --

THE COURT: I'm sorry, Mr. Huebner. Can I interrupt you on just the last point about the stipulation?

What is the schedule for releasing those documents?

MR. HUEBNER: So it's already been done, Your Honor. My understanding -- I'm not sure if Mr. Kaminetzky is on the live line. I might be misspeaking, but I think we have already released a big slug of them. Or if not, they're, like, literally waiting to go. I would ask if there is a team member -- because I actually don't do document production.

MR. PREIS: Can I...

MR. HUEBNER: Mr. Price, please.

MR. PREIS: Sorry. Your Honor, this is Arik Preis from Akin Gump Strauss Hauer & Feld. Can I be heard on the question you just asked?

THE COURT: Sure.

MR. PREIS: So under the stipulation, this was an important point, which is the timing. We negotiated that the first batch would be produced no later than Sunday, November 15th. And then all the remaining batches by November -- by Sunday, November 22nd. And obviously to the extent there is any further document review that the Debtors do, they would continue to supplement.

Indeed, as Mr. Huebner pointed out, we did receive the first batch of a couple thousand documents on Sunday. And we -- the next deadline and the final deadline is next Sunday.

THE COURT: Okay. So part has already been released, and the rest is imminent.

MR. HUEBNER: Yes. And, Your Honor, for what it's worth, my team actually advises me -- I just got an email -- that we actually made the first production on Saturday. So we are moving, and maybe even ahead of schedule. But whether it was Saturday or Sunday, it's very fast and a lot, and we're moving heaven and earth to get it all out. Again, to accelerate mediation and give people documents that they believe are very important to see, notwithstanding their, in our view, privilege. So hopefully that's a very good thing for everybody.

THE COURT: Okay. And you noted that this is now clearly under a stated joint interest agreement. So I'm

assuming that most if not all of these documents pertain to issues about avoidable transfers.

MR. HUEBNER: So, Your Honor, interestingly enough, they're much broader than that. You know, one are that I think there was substantial agreement on is avoidable transfers. But, frankly, we sort of went big and we said why don't we just give you essentially every privileged document exchanged with the Sacklers on a wide variety of topics and actually went beyond the core topics. Because, again, the goal is to dispel uncertainty, suspicion, concern. And so there are some topics like individual employee issues or IT issues that we all agreed people don't need to see because, frankly, this is already pretty unusual and far afield. But it actually is much broader than just transfers.

And just so the Court understands -- again, I'm getting emails of course as we speak -- we've produced 3,024 documents already. Again, all privileged documents. And the next production will be the big one. Obviously we're dancing as fast as we can. And as Mr. Preis said, the next set is coming quite soon.

THE COURT: Okay. All right. Thank you.

MR. HUEBNER: So, Your Honor, that --

MR. PREIS: Your Honor --

MR. HUEBNER: Oh, I'm sorry. Please.

MR. PREIS: I was unaware that Mr. Huebner was going to speak about the resolution today. And I had -- if Your Honor will indulge, I'd just like to make three points about the stipulation. Is that okay?

THE COURT: Okay.

MR. PREIS: Mr. Huebner did point out that we do have potentially differences of opinion about whether or not -- excuse me, how to address discovery in these cases. But I think we both agree, first, that resolution of the issue is another important step toward moving the cases forward and will assist all the parties in mediation.

The second point is that the stipulation -- I do want to point out that it allows us to meet and confer with the Debtors about using the documents in depositions and filings and that we must agree with the Debtors prior to such use. Given that we and the Debtors have the ultimate same goal, it should go without saying that we should be aligned on such use if it comes to that. We found this provision particularly helpful given the upcoming privileges hearing with regard to the Sackler documents withheld for privilege. And we'll see, obviously, if any of the documents produced will be helpful there.

Finally, I just want to clarify something Mr. Huebner said. He said something about the fact that this ends any and all discovery that the Committee and the non-

consenting states will serve on the Debtors in these cases. And if I misheard that, I apologize. That's not exactly true. It does put an end to the discovery we will be serving on the Debtors as it relates to the items and the issues that are at play on the estate causes of action. Obviously if there are other issues in the case, like plan confirmation or something else that has nothing to do with the topics that we have already sought discovery from the Debtors, that's obviously fair game, and the Debtors understand that, and that's in the stipulation. I just didn't want there to be any confusion about that.

THE COURT: Right. No, that's clear to me.

MR. PREIS: And the other point related to that is although it's not specifically stated in the stipulation, obviously the stipulation only applies to the parties to it. In other words, the non-consenting states, the Creditors' Committee, and the Debtors, and that those limitations don't apply to any party who is not a party to the stipulation. I assume that's obvious, but someone who had looked at it asked me to make sure that was clear. That's it.

THE COURT: Okay, very well.

MR. HURLEY: Your Honor, this is Mitch Hurley. Can I make just one other point of clarification? There is some work ongoing by the Debtors with respect to Norton Rose documents. And I'm sure Mr. Huebner didn't intend to

suggest, and maybe didn't, that that's coming to an end. But that work is not affected to my understanding from the stipulation. And I just want to make that clear as well for the record.

THE COURT: Okay.

MR. HUEBNER: So, look, I think -- and I apologize, I meant to give a very general overview. There's actually a lot of really cool stuff in the stip that I also didn't lay out. But I don't think I disagree with the things that were said, and I think the document is clear. I certainly don't disagree with anything Mr. Preis said. I'm assuming Mr. Hurley, who I find to be right almost all the time as well, is correct. And so with that, I think we're good. It's a great stipulation. Hopefully it will be very helpful. And we are, as I said, moving heaven and earth and ahead of schedule to produce everything within a very short time period.

THE COURT: Okay.

MR. HUEBNER: So, Your Honor, if we're good on that, I guess we can now turn to the agenda.

Item One, as Your Honor noted, is the KEIP/KERP motion. And so I'll take this one if that is okay with the Court.

Your Honor, as the Court knows from the docket and from our prior hearings of late, the Debtors originally

filed their motion to authorize a KEIP and a KERP over two months ago, on September 9, 2020. After two hearings and extensive adjournments, the only remaining issue before the Court today is whether the Debtor may provide negotiated further reduced 2020 incentive compensation as agreed to by the UCC, the ad hoc committee, the non-consenting states, and the MSGE, and they're no longer objected to by the ad hoc committee on accountability. These payments relate only to the Debtor's CEO and CFO. Everyone else is done. As the Court surely remembers, two of our insiders actually resigned between the time of the filing and the first hearing. The other four were addressed successfully after a negotiated resolution at the last hearing with no objections.

And now we're left with these two where the U.S. Trustee is, despite the settlements and accommodations and reductions and date changes and the like reached for so many other parties over a multi-month period, is pressing its original filed objection.

Your Honor, as requested int eh motion, the KEIP, as we laid out, already included material concessions relative to historical practice under these very longstanding AIP and LTRP for these two individuals.

The KEIP award, which is calculated as the sum of the annual incentive plan award that such individual would

have received plus the LTRP payments due in 2021 was originally filed with the following reductions. A 47 percent reduction to the CEO's LTRP payment in 2021, a 25 percent reduction to the CFO's LTRP payable in 2021, capping payouts at a hundred percent of target, even though our annual incentive program, like many others, historically pays in excess of target if the company exceeds its performance goals. I think in our situation if my memory is right, the cap was 150 percent. But we capped it at 100 irrespective of performance.

Second, Your Honor, in the initial motion, LTRP payouts for 2022 are reduced by 22 percent for the CEO and 12 percent for the CFO. And the long-term award payable in 2023 was reduced by 50 percent for both the CEO and CFO relative to the LTRP program that would normally be made this year.

As I said, we adjourned it and had extensive negotiation and reached a deal with the UCC, the AHC, the non-consenting states, the MSGE and filed a negotiated and fully-agreed order implementing, if the Court agrees with us, implementing that settlement.

At the last hearing, as I'm sure all parties remember, we presented the settlement reached with the same creditor constituencies for the other four insiders. For three of the four of them, they were moved to the midpoint

of the 50th and 75th percentiles of the Willis Towers Watson companies and market data for annual TDC. The general counsel was treated separately as a special situation. And the payouts to those insiders, besides a variety of other date changes to make things more attentive and achieve certain other goals requested by the creditors also reduced their 2022 and 2023 payouts by an additional 4.5 percent.

The settlement before the Court today, Your Honor, on our last two executives is even more concessionary. The CEO's proposed KEIP award is being reduced by an additional $593,000, which results in TDC below the midpoint of the 50th and 75th percentiles. Specifically much closer to 50 than 75. It's nine percent above 50 and 24 percent below 75.

The CFO's 2020 TDC was already below the midpoint of the 50th and 75th percentiles. Even taking into account his proposed KEIP award, it was 15 percent above and 17 percent below 75. So no further reduction was required on the analytical framework that was used.

In addition, they've agreed to the same 4.5 percent reduction to the 2022 and 2023 payouts agreed to with respect to the other key participants. The aggregate reduction for the two individuals are approximately $711,000.

As this Court previously recognized -- and of

course we did this at several hearings last year, stretching into January if my memory is right, as well as two hearings this year -- the AIP and the LTRP were standard components of employees' compensation. And the Court's phrase was, quote, "This seems a lot more like salary than a bonus plan even though it's referred to as a bonus plan." That's at Page 104 of the transcript from December 4, 2019.

Accordingly, as you went on to say on the next page, "They're just going to get what makes them in the middle, makes them competitive. To me, that's not a bonus." Page 105, Lines 2 to 3.

Your Honor, we want to be very clear because, once again, I think people outside the bankruptcy case have either just misunderstood or mischaracterized. And so it's just important that the record is clear. These are not bankruptcy bonuses. They are not retention bonuses. They are not pay-to-stay bonuses. They are not special one-time, thanks-so-much bonuses. The KEIP is a continuation of annual programs that are 20 to 30 years old that provide annual compensation of the type that most, probably even the overwhelming majority, of large companies provide. There is nothing extraordinary about these programs. They are not tied to the bankruptcy cases. They were not put in place for the bankruptcy cases. This is the same type of compensation that is and would be available to executives at

non-distressed pharma companies, and really by most companies in any industry, which is how one sets the market for compensation.

Moreover, these employees, all of our employees, actually, face downsize and limitation that employees at non-distressed pure companies and pure pharmaceutical companies generally do not face. They have very little visibility into their long-term employment prospects. Many have severance rights capped by the Bankruptcy Code, and none have any equity or other similar upside.

In addition, they must manage all the complexities of a uniquely challenging Chapter 11 process over and above the significant responsibilities of their regular role and actually run and lead an operating pharmaceutical company during a global pandemic.

Thus, even stating that these employees are now, quote, slightly above the 50th percentile of TDC for 2020 actually overstates things because of all the many things that pure pharma executives would have.

Let me talk for a minute about performance metrics, Your Honor. Because that was one of the issues raised many months ago by the U.S. Trustee.

As an initial matter, this is actually déjà vu all over again. This Court was clear at the very fist hearing on this motion, on September 30th that, quote, "Fighting

over other things relating to KEIPs really does not lead to much of a change, if anything. But it does lead to more cost." And you asked the parties to focus on the market for the Debtor's competitors. The Debtors and others have already taken this to heart, and took it further to heart, negotiating their changes to the KEIP based on their assessments and the market for compensation of executives at non-distressed pharmaceutical companies in a highly-constructive manner.

And the U.S. Trustee, by contrast, continues to press the types of issues that were addressed directly last year, including with respect to the similar objection pressed.

The U.S. Trustee first takes issue with the fact that some of the performance metrics include target dates to achieve milestones that fall before the end of the year, so some deadlines have passed or were close to passing when the motion was filed. This is unavoidable in a bankruptcy where you just can't move based on the timing of the case early enough a lot of the time.

As courts have noted, the difficulty of achieving performance metrics is properly measured from when they were set, see In re Aralez Pharm. US Inc., 2018 WL 6060356, at *4 (Bankr. S.D.N.Y. Nov. 19, 2018). As that court noted, which is directly on point and quite similar to what this Court

ruled last year, "The Court is unpersuaded that the targets are not sufficiently challenging because some of those targets now appear achievable in hindsight... The Court sees no issue with reviewing a KEIP that was designed to incentivize work that is already partially performed." This is exactly what this Court did last year.

Moreover, Your Honor, when this motion was filed, the CFO testified in unrebutted, sworn testimony that, "It currently appears that some of the 2020 performance metrics may be achieved. Others still require extensive work to be achieved, and it is a virtual certainty that others will not be achieved." Lowne Declaration, Paragraph 22.

This only reinforces the CFO's other unrebutted sworn testimony that the performance metrics are, "Ambitious, having threshold targets that are difficult to achieve, both individually and when considered in combination, and were required to keep participants' diligent and committed efforts."

And, by the way, we know that Mr. Lowne is telling the truth, because in fact as of this morning, the plan is not going to hit target. It's at something like 91 percent. And so in fact leaving aside that the testimony was absolutely truthful when given, it also appears to have been a prognostication of perfect accuracy.

Despite this unrebutted testimony and the U.S.

Trustee's gracious agreement that it did not need to cross-examine the witness and that the declarations could now be admitted for the third time for all purposes, including these, the U.S. Trustee nonetheless argues that there is not sufficient information to determine that the performance metrics are truly stretch goals.

This ignores the fact that this Court questioned Mr. Lowne extensively last year about this very issue and whether the process the company used to develop the performance metrics, which are actually based on the same budget that the Debtors used to run their business, was sufficient to ensure that the metrics in fact represented stretch goals.

On December 4th, 2019, which I think was the second of our compensation hearings last year, at Pages 72 to 75, we had exchanges like, "So are there times when you asked them for more results than proposed," said the Court.

Mr. Lowne, "Significantly more."

As Mr. Lowne testified in his sworn declaration, this year's performance metrics are, "Consistent with and are a continuation of past practice." See Paragraph 28. There is no reason whatsoever that similar metrics set through a similar process do not get approved this year as they were last year.

One subpoint, Your Honor. The U.S. Trustee takes

issue with the fact that ten percent of the performance metrics consist of a score on a "people and culture" metric. However, many answers. One, the same ten percent rating, which is of course only ten percent of this more subjective factor of people and culture, was approved by this Court last year. Second, timely implementing organizational education to occur in the first three quarters of 2020 involving a transition plan for the fourth quarter are very important strategic priorities for the company, as Mr. Lowne testified at Paragraph 26. Contrary to the U.S. Trustee's assertion that this is an entirely typical metric for senior managers of the company, which at the end of the day counted people as among its most important attributes for so many reasons. The company and the compensation committee of the board of directors and their advisors respectfully disagree.

Last year the Court extensively questions our declarants, the same two declarants that testify in support of this motion, and found their answers satisfactory to essentially the same programs. And we are, frankly, surprised to have to revisit these issues yet again a year later.

Two final issues, Your Honor. I'm pretty much done on the compensation motion.

Number one, the Court already rejected the U.S. Trustee's argument that the KERP participants' regular

annual compensation programs shouldn't be renewed because of a purported lack of progress in the Chapter 11 cases. With respect to the emergency fund issue, the Court specifically noted that, "Even the decisionmakers here for the company are not responsible for there not being an emergency fund." Transcript, 112, Lines 19 to 20, September 30, 2020.

Paragraphs 17 to 28 of our KERP reply, Your Honor, describes the very substantial progress the Debtors have made towards confirmation, which is in no small part the result of the efforts of many people, but assuredly including the key participants. As to the ERF, the Court understands quite well why that ultimately did not happen. It certainly was not for lack of an unbelievable amount of passionate effort by the Debtors.

In fact, the Debtors believe that enormous progress has in fact been made in this case, as hopefully will be evidenced by the agenda later this morning.

One final point, Your Honor. It should be noted, and I want to say loud and clearly, no compensation order entered in these cases nor one penny of compensation paid to any employee during these cases prejudices or determines or really has any relevance whatsoever to whether plan releases will be granted to any individuals or impede any plan issues at all. The orders of course don't address that. They never have, they never will.

Moreover, the 2019 clawback language that we all agreed to, and I think actually the Court also kind of negotiated with us -- I think it was kind of a big round robin -- is of course also included in this order, as it has been in every one of our proposed and entered compensation orders. And to say it simply, plan issues await the plan. This is only about 2020 compensation where our last two executives and the Debtors are actually taking reductions and agreeing to reductions with virtually every creditor group on this case that bring then I think frankly comfortably within the range if not below similar market compensation.

The Debtors therefore respectfully submit that the KEIP for the CEO and the CFO, subject to the agreed reductions negotiated with the major creditor constituencies, the reservation of future issues for the future and the clawback language and the other language yet again found in the order we propose be approved.

That, Your Honor, is what I have to say on item one of the agenda.

THE COURT: Okay. Thanks. I have one question on the modifications to the key employee incentive plan, and then I want to address Mr. Lowne's testimony and Ms. Gartrell's testimony.

As far as the agreed modifications, if you go to

Page 3 of the Debtor's supplemental reply, which lays out those modifications, I believe I understand the monetary ones and the timing ones. But if you look at the last three bullet points in Paragraph 4, the first one says, "The KEIP award payments will be subject to a clawback if the remaining KEIP participant resigns or is terminated for any reason other than by the Debtors without cause prior to June 30, 2021." And then it says, "Accepted such clawback will expire upon emergence should it occur earlier." So it's clear there that the clawback is if the remaining KEIP participant resigns or is terminated for any reason other than by the Debtors without cause.

The next two bullet points refer to the LTRP or LTRP payouts due in 2022. And it says that that will be subject to a clawback, but it doesn't say what that clawback is triggered by. Similarly, the last bullet point says subject to a clawback, which deals with the long term incentive compensation payable in 2023.

Should I take it that the clawback referred to in those two paragraphs is the same clawback referred to in the KEIP award payments, i.e. if the remaining KEIP participant resigns or is terminated for any reason other than without cause?

MR. HUEBNER: Yes, Your Honor. The way it works -- it actually kind of has a funny origin. Normally debtors

want things paid more quickly, and creditors want it paid more slowly for retention purposes.

THE COURT: Right.

MR. HUEBNER: Here it was actually the creditors who asked that the LTRP payments otherwise due in 2022 and 2023 be paid on emergence because they just didn't want the successor entity to have any payment obligations left --

THE COURT: Right.

MR. HUEBNER: -- with respect to the pre-emergence period.

THE COURT: No, I understand. We went over the timing point at the last hearing and I became comfortable with that. But I'm just focusing again on what is it that triggers the clawback, and is it combination with --

MR. HUEBNER: Yeah, I was --

THE COURT: Okay.

MR. HUEBNER: Yeah. I was literally -- that was the next clause, which was in order to ensure that we didn't lose the retentive aspect of this, if, before what would otherwise have been the applicable payment dates in 2022 or 2023, the employee, exactly as you point out, resigns without good reason or is terminated for cause, then the money has to be paid back. So if you're there through 2022 past the payment date and then you resign without good reason, obviously only the 2023 payment gets clawed back.

So there is a temporal aspect as well. But the standard is the same. And apologies, we didn't re-layer it into every provision. But, yes, there is no arbitrage between the clawback statement and the clawback standards for the different things that are paid prior to what the Debtors want to be the sort of hold period with respect to (indiscernible).

THE COURT: Right. And then of course we have the separate clawback language in paragraph 9 of the proposed order, which is also the order that's in effect for the other employees if it's found that any of the covered parties knowingly participated in any criminal misconduct in connection with his or her employment or was aware of the public sources of such conduct. So --

MR. HUEBNER: Yes.

THE COURT: That's a separate clawback. I was just referring to this one on Page 3.

MR. HUEBNER: Yes.

THE COURT: But I think the record is clear now on that point.

MR. HUEBNER: Yes. And apologies if I was too oblique when I was referencing at the end sort of the clawback provision that we all negotiated last year. I was talking about what I guess we could call the misconduct clawback, the clawback provision which of course is here yet

again, as it was and will be in every compensation-related order that we seek authority to have entered.

THE COURT: Right. So in support of this motion, which now only has one remaining part to it, my having entered orders on the rest of the motions request for relief already, the Debtors submitted a declaration by Mr. Lowne dated September 9, 2020. The Debtors have also submitted three declarations by Ms. Gartrell. The ones that I think are relevant here are the September 9, 2020 declaration just to set the context for how the currently requested relief has been modified from what was originally sought. And then we have her second supplemental declaration that deals with the current request, which is dated November 16th, 2020.

I, as you all know, normally take direct testimony by declaration or affidavit. I see Mr. Lowne on the hearing dashboard and understand that the main issue that the U.S. Trustee is raising pertains to the incentive metrics, which is what is covered in his declaration as opposed to Ms. Gartrell's primarily.

So, Mr. Lowne, let me ask you. Your declaration, again, was attached to the original motion. It's dated September 9th, 2020. Other than the update that Mr. Huebner just recited as to not meeting certain of the targets as of yesterday, is there anything else in your declaration that you would wish to change?

MR. LOWNE: No. There is nothing in my declaration I wish to change. And Mr. Huebner's update is data that I provided to him which reflects our latest estimates of how we're performing on the metrics. So that's the only update to my previous declaration.

THE COURT: Okay. All right. So I understand, again, from the agenda as well as Mr. Huebner's remarks, that the only remaining objection to this aspect of the motion is by the U.S. Trustee. Does the U.S. Trustee wish to question Mr. Lowne on his declaration?

MR. SCHWARTZBERG: No, Your Honor. Paul Schwartzberg for the U.S. Trustee's office.

THE COURT: Okay. All right. So I will admit it. I've reviewed it carefully and I don't have any questions on it that I didn't ask at the hearing in connection with the 2019 KEIP/KERP motion. But I'm happy to hear then the U.S. Trustee if you have any oral argument to add to the objection.

MR. HUEBNER: Your Honor -- Mr. Schwartzberg, just one second.

Your Honor, apologies. Just to be very technical, could we also move the three Gartrell declarations formally into evidence with respect to this hearing --

THE COURT: Okay, that's fine. Ms. Gartrell's most recent one -- I think we may actually have done that

with regard to the first two. But her most recent one is dated November 16th. I don't know if -- Ms. Gartrell, are you on the phone?

MS. GARTRELL: Yes, Your Honor. I am on the phone.

THE COURT: Okay. Knowing what you know today and knowing that your declarations would be your direct testimony in this motion, except as modified by the two updates, is there anything in the declarations, and in particular of this November 16th one, that you would wish to change?

MS. GARTRELL: No, Your Honor.

THE COURT: Okay, thank you. And, Mr. Schwartzberg, do you have any question for Ms. Gartrell?

MR. SCHWARTZBERG: No, Your Honor.

THE COURT: Okay, very well. So I'll admit those declarations for purposes of this hearing.

So, again, Mr. Schwartzberg, I don't know if you have oral argument or you just want to rest on the objection.

MR. SCHWARTZBERG: Your Honor, I have two brief --

THE COURT: If you have oral argument, I'm happy to hear it.

MR. SCHWARTZBERG: Yeah. I have two brief issues that the U.S. Trustee, my office and I have with the motion,

Your Honor, that we wanted to raise.

The first, Your Honor, 503(c)(1) we believe does not permit a transfer to an insider for retention purposes other than certain facts and findings that are not relevant here. And it speaks of transfer. It doesn't talk about bankruptcy bonus or the like. It just uses the word transfer. And the Debtor asserts that these are not transfers for retention purposes. But I do note the burden is on the Debtor to prove that the metrics they set are incentives and in fact they call them inventive plans and are not merely pay-to-stay level.

The Debtor has three categories of metrics; the innovation and efficiency metric, the people and culture metric, and the value creation metric.

The innovation and efficiency metric sets financial targets that need to be met in 2020 in order for awards to be paid. We do not believe that they actually provided enough information to allow a reviewer of the pleadings to determine whether those are actually incentivizing enough.

For example, I believe the largest percentage of that innovation and efficiency metric is the Rhodes operating loss. They listed I believe on Paragraph 29 of the motion as a $35 million loss of the performance target. But the don't list what the actual loss was in 2019, 2018.

So we believe that those financial -- that financial information would be relevant in helping to determine whether this is a true incentivizing target or not.

The other metric they have is the people and culture metric. I know Mr. Huebner talked about this briefly. But to my reviewing of it, it's a very vague metric and so it would be reviewed holistically. It's not even clear what that means. So I believe it's hard to make that as a standard to determine whether someone -- to determine whether someone has actually reached that metric or not. As indicated before, I believe it's the Debtor's burden on this.

And finally, Your Honor, the value creation metric, as we noted in the motion, which was originally going to be heard on September 30th, at that date all of those tasks would have been completed. And so it's hard to say that it's looking forward when it appears to be looking backward.

Now, I know there's caselaw that indicates it's when it's done that the metric is created, but this is a 2020 program and the motion was filed I believe in August or early September. It's the Debtor who controls the timing of it, and it's their burden as well to prove that it's incentivizing.

And finally, Your Honor, the last issue I want to

raise -- and I do realize I did raise this exact same issue at the retention portion of this hearing and Your Honor overruled it, but I wanted to raise it again. And that's the additional compensation going to the insiders while yet no payments have been made to victims in this case.

The CEO and the CFO are going to receive respectively I believe between $2 million and $3 million for the CEO, and the CFO between $750,000 and $1 million in KEIP payments. And this is on top of the additional compensation they received in 2019. These are the two highest-paying officers, insiders. And we believe that because the victims have not received anything yet and it's not clear when, although I do understand we are getting close to that point, we don't believe that this scenario justifies it under the facts and circumstances the award of the additional compensation at this point. And that's all I have, Your Honor.

THE COURT: Okay. Mr. Huebner, on the last -- or maybe Mr. Lowne can answer this. On the ten percent category dealing with personnel, who awards -- who actually makes the determination to award the bonus there?

MR. LOWNE: So we have a compensation committee which is comprised of members of our board. And when the bonus recommendation is made by each of the categories, there will be a presentation to the compensation committee

on each of the categories of the bonus awards. And the compensation committee ultimately determines the payout percentages.

THE COURT: Okay. All right. Thank you.

Okay, anything else?

MR. HUEBNER: Your Honor, unless the Court has any questions, I actually think that we addressed each of these points in our reply. And I know we have quite a full agenda.

THE COURT: Right.

MR. HUEBNER: And so if the Court has questions, I will answer them. But I actually believe that each of the points in fact was addressed at some length and definitively, both by the declaration and by our reply. The Court's prior concern of last year and in many years of practice before you, I know that senior executives never be able to set their own compensation. And that is assuredly not the case here, as you've just heard. You know, this is the board of directors and an operating compensation committee that reviews the performance of executives and makes decisions. And as I said a little while ago, we're tracking below plan, which is pretty big proof that these are not layouts that were set recently to make sure people got a hundred percent. That's just not true at all. They were set a long time ago, and the proof is in the pudding.

And we would rest on our papers unless the Court has questions.

THE COURT: Okay, fair enough. Thank you. All right.

I have before me, as I noted --

MR. PREIS: Your Honor?

THE COURT: Ye?

MR. PREIS: I'm sorry, this is Arik. I used the hand-raising thing on the --

THE COURT: Oh, okay. There are just too many hands on the screen, so I didn't notice it. I'm sorry.

MR. PREIS: That's okay. I just wanted to make a few points on behalf of the Committee, the ad hoc group, and non-consenting states and the multi-state group.

THE COURT: Okay.

MR. PREIS: And it won't take more than a minute.

As the Debtors noted, the four groups -- the UCC, the ad hoc group, the non-consenting states, and the multi-state group -- worked together to resolve our collective issues on the KEIP. I think it's a great example of how the constituents in this case can work together constructively and cooperatively in a way that we were able to streamline the discussions on the KEIP and the KERP in ways, frankly, that we were not able to do one year ago.

And I do want to point out that a lot of the

credit goes to the states and their advisors. We think the resolution -- I speak for all of us. I think the resolution reached makes sense for the case and struck the right balance given all the facts and circumstances.

That being said, I just want to note two things. First, the Debtors filed a reply yesterday on the KEIP. Although we reached resolution on the KEIP, I believe I speak for all of us again when is say that for the record, we don't necessarily agree with some of the statements made in that reply, although we do join in the relief requested.

The second thing is, as Mr. Huebner pointed out -- and this was very important to the resolution -- none of the resolutions reached today or previously on the KERP or the KEIP reflect any agreement about the propriety or scope of releases to be granted under the plan. And the four groups I mentioned all reserve our rights to address that issue at the appropriate time.

That's it, Your Honor. Thank you.

THE COURT: Okay.

MR. HUEBNER: Your Honor, let me say one last thing, which is I actually would like to pause for just 20 seconds and say thank you as well. The Debtors are not unaware that executive compensation is a complicated and charged topic in every case. Here as well, and maybe here as many or more than most hard cases. And in fact, the

creditor groups were quite constructive and extremely thoughtful. And we actually -- once we were able to get past a lot of the other issues and we did them in just the right order, which is working up from the bottom to protect the sort of less well-compensated and less senior parts of the workforce, we actually moved pretty swiftly and very productively towards reaching agreement here. Even if someone is below market comp, it doesn't change the fact that, you know, a million dollar bonus or more to an executive is difficult to understand in many complicated ways. And we are very grateful that the core players worked with us so productively to put this behind us.

And, as I said, the revised form of order is completely agreed. And unless the Court has questions, we would ask that it be entered.

THE COURT: Okay. Very well, thanks. All right. I have before me the remaining portion of the Debtor's motion for approval of a key employee incentive plan under Section 503(c)(3) of the Bankruptcy Code for 2020 as well as resolved consensually by the party-in-interest objectors other than the U.S. Trustee dealing with portions of the incentive program for future years.

The remaining portion of the motion pertains to the Debtor's CEO and CFO. Again, the Court having granted on a largely consensual basis the other portions of the

motion.

The Bankruptcy Code, in Section 503(c)(1) effectively prohibits a transfer by a Debtor or an obligation incurred by a Debtor to an insider of the Debtor for the purposes of inducing such person to remain with the Debtor's business. I say effectively because the provision lays out certain conditions that if met would permit such a stay payment or obligation. But as a practical matter, those conditions would not be met here, not would they be met in almost any bankruptcy case.

It's acknowledged that the CEO and CFO are insiders as that term is defined for purposes of 503(c)(1) and 101(31) of the Bankruptcy Code. Therefore, if the proposed key employee incentive plan is for the purpose of inducing those two people to remain with the Debtor's business, i.e. to stay employed, then I would deny the motion.

Section 503(c)(3), however, provides that for any other transfer to an employee, the Court -- and that is outside the ordinary course of business, it would be prohibited if it is not justified by the facts and circumstances of the case.

The objections by various parties with an economic stake in these cases, including the official unsecured creditors' committee, the non-consenting state group, and

the ad hoc committee on accountability and others have been resolved by changes to the proposed KEIP for these two individuals, which based on my review, including my review of Ms. Gartrell's second supplemental declaration, clearly put their treatment at market for similar pharmaceutical companies even though Purdue obviously is in a bankruptcy case with substantial additional tasks to be performed by these two people.

In light of those changes, all of the objections were withdrawn except the objection by the United States Trustee. That objection raised two points. The first is that -- well, actually, it raised three points.

The first is that in essence the Court already approved a KEIP for these two people with respect to 2019, so why should it do so in 2020.

The second is that these cases have not resulted in a Chapter 11 plan yet or an interim distribution to creditors, and therefore no KEIP should be awarded.

Lastly, the objection states that payments under the proposed KEIP are based upon metrics that, quote, may have already been met and therefore do not incentivize future performance, may not represent difficult targets, and are vaguely described so that it cannot be determined whether either they were difficult to achieve or were not already compensated for in the first round in 2019.

It is clear here that the Debtors have the burden with respect to their motion. However, they have submitted a declaration by John Lowne that describes the metrics here and further asserts that the metrics were in fact -- or at the time that they were adopted were expected to be difficult to achieve and, as stated in the declaration, would require significant work well above the day-to-day work that is part of the normal job description for these employees.

Moreover, it is clear from Ms. Gartrell's declaration that without the prospect of earning these incentive payments, the two executives would be seriously undercompensated, i.e. it is an important part of their market-based compensation, albeit that if they do not perform at the high levels described in the Lowne declaration, they would not earn the incentive payments.

The courts have recognized that all forms of compensation to some extent incentivize a party to stay at work. Obviously if you're not paid, you're inclined to leave. Or if you're not paid at market, you're inclined to leave. So the courts have put a I believe reasonable gloss on Section 503(c)(1), which is that the payment or obligation does not have the primary purpose of being for the employees -- inducing the employee, rather, to continue to remain employed by the Debtor. See for example Aralez

Pharmaceuticals US Inc., 2018 Bankr. LEXIS 3649, 7-8 (Bankr. S.D.N.Y. November 19, 2018) and the cases cited therein, as well as In re Nellson Nutraceutical, Inc., 369 B.R. 787 (Bankr. D. Del. 2007), and In re Global Home Products, LLC, 369 B.R. 778, 785 (Bankr. D. Del. 2007), in which the court stated, "The entire analysis changes if the bonus plan is not primarily motivated to attain personnel or is not in the nature of severance."

Courts have found that a compensation plan is primarily incentivizing when it properly incentivizes management to produce an increased value of the estate and is designed to motivate the employees to achieve performance goals that are difficult to achieve and are not simply part of doing their own job in the ordinary course, i.e. merely reporting to work, or benefitting from the occurrence of an event such as confirmation of a plan or the debtor's sale of substantially all of its assets. See generally In re Dana Corp., 358 B.R. 567, 571 (Bankr. S.D.N.Y. 2006), In re Borders Group, Inc., 453 B.R. 459, 471 (Bankr. S.D.N.Y. 2011), In re Residential Capital, LLC, 478 B.R. 154, 170, and In re Hawker Beechcraft, Inc. 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). There, summing up much of the caselaw, Judge Bernstein stated that the metrics for an incentive program require management to stretch to meet performance goals.

Here, the metrics for the incentive compensation are not challenged and have already been approved by me with respect to the 2019 KEIP, namely value creation, which accounts for 40 percent of the determination of the award, which has metrics tied to implementing specific targets for delivering opioid overdose medications and drugs and the research and development for other medications and drugs such as for treating insomnia, cancer treatments, treatment of ADHD, nausea, and the like.

The second metric is with respect to innovation and efficiency, which is a 50 percent portion. This sets various income or minimizing of loss targets for various business segments of the Debtors.

And then the final ten percent of the metrics relates to managing people, which is obviously a major component of any senior executive's job, particularly in a Chapter 11 case where, as this incentive program provides, dealing with transition plans or programs. I will note that two of the KEIP participants have resigned, which clearly reflects the need for these senior executives to dal with high level as well as personal issues running through the entire organization caused in part by the bankruptcy cases themselves.

As I noted, Mr. Lowne has testified that these metrics are difficult to achieve, and indeed, that some of

them will not be achieved. Moreover, the objectors, who have withdrawn their objections, are well-informed, well-represented, and good stewards of their clients' positions and in evaluating this program, including the triggers for bonus awards within these three metrics, have concluded that the KEIP for 2020 as revised is not objectionable. There was no attempt to cross-examine Mr. Lowne or Ms. Gartrell.

And in light of all of that, I conclude that the Debtor has carried its burden to show that in fact under the standard enunciated by the courts for motions like this pertaining to Section 503(c)(3), this KEIP as modified is in fact appropriate. The courts have noted that the general business judgement standard as applied in bankruptcy cases applies to the "justified by the facts and circumstances of the case" language of Section 503(c)(3). But, given the specific issues raised by incentive plans for senior management have noted that courts can be guided in exercising their review of the program and whether it passes muster as showing an exercise of sound business judgement if they consider the following.

Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e. is the plan calculated to achieve the desired performance? Is the cost of the plan reasonable in the context of debtor's assets, liabilities, and earning potential? Is the scope of

the plan fair and reasonable? Does it apply to all employees? Does it discriminate unfairly? Is the plan and proposal consistent with industry standards? What will be due diligence efforts of the debtor investigating the need for a plan, analyzing which key employees need to be incentivized, what is available, what is generally applicable in a particular industry? And lastly, did the Debtor receive independent counsel in performing due diligence and in creating and authorizing the incentive compensation. Again, see In re Dana Corp., 358 B.R. 576, 577 as well as well as In re Aralez Pharmaceuticals US, Inc. 2018 Bankr. LEXIS 3649 (Page 9).

Here, clearly the Debtors have independent counsel and advice. Ms. Gartrell's supplemental declaration shows that the proposal is consistent with industry standards, specifically within the pharmaceutical industry. And there's no suggestion that this plan is not reasonable in the context of those assets, liabilities, or earning potential. And based on Ms. Gartrell's testimony, it appears to me that the plan does not discriminate unfairly and that it awards market compensation.

And finally, as I already noted, it is properly incentivizing and the Debtors have carried their burden of proof in that regard.

As to the remaining objections, I'll take them in

no particular order.

As I noted during the first hearing on this when the objection was raised with regard to other employees of the debtors, the fact that the Debtor's plan has not been confirmed or that there has not been a substantial interim distribution to creditors in this case to date is completely and utterly irrelevant to the motion before me. Indeed, to impose such a standard would undercut the foregoing caselaw. As Judge Glenn held in the Residential Capital case that I cited, one should not measure a right to a bonus award based on the occurrence of an event like a sale or confirmation of a plan. I repeat, should not measure it that way. This is not simply another bonus. This is part of annual compensation. The U.S. Trustee knows that. And any insinuation of the contrary is really just simply misguided.

Secondly, the fact that a debtor needs to obtain court approval with proper vetting by third parties before that approval, i.e. on notice and a hearing, routinely means that when these plans are set, there is a gap where employees are performing with the hope that they will actually be compensated according to those plans before the court actually considers the motion. It doesn't take much common sense to understand that if one adopted a rule that said that we now know whether these performance goals are met or not and therefore they can't be incentivizing makes

no sense. That's not the way to run a business. And that's not what the court approval process is about. The court approval process is to determine whether when the goals were set they were within properly the reach of Section 503(c)(3). It's hard to imagine that such an argument would even be made, but it has been made in the past and actually dealt with as I've dealt with it now. See In re Aralez Pharmaceuticals U.S., Inc., 2018 Bankr. LEXIS 3649 (13-14).

The only way this argument could be made is if the fact that the targets were achieved shows that they were really easily achieved with no work. And that is a difficult showing to make. But to simply say that with the lapse of time we don't need it anymore just is backwards. So I hope we will not see this argument in the future.

So I will grant the Debtor's motion with regard to these two employees. And I've seen the revised order which is proper and consistent with the prior orders that I've entered in this motion. So you could email that to chambers, Mr. Huebner.

MR. HUEBNER: Thank you very much, Your Honor.

Now, the second item on today's agenda is actually not the Debtor's motion. It's in relation -- the hearing that we had at the last omnibus hearing about the Sackler family sort of comfort order with respect to the injunction.

I assume Mr. Uzzi will take the podium. I should have checked with him advance. But Mr. Uzzi, is it correct that you are the person to whom I turn over the podium?

MR. UZZI: Yes, I am here. Can you hear me?

THE COURT: Yes, I can hear you fine.

MR. UZZI: Thank you, Your Honor. Before the Court is the Sackler Family's motion to confirm that payment under a settlement agreement with the DOJ is not prohibited by this Court. That motion is Docket 1833.

Your Honor, I should have stated for the record, Gerard Uzzi. I represent the Raymond Sackler family. Debevoise represents the Mortimer Sacker family. This is a joint motion by both families. As with our prior conference, I will take the lead in presenting the motion, but my colleagues from Debevoise may seek to supplement my remarks.

Your Honor, in connection with the request to shorten time in respect of this motion now that's before the Court, the Court heard substantial argument actually on this motion at the October 28th hearing. At that hearing, the Court instructed us to set this motion for disposition at today's hearing and to file a notice both setting an objection deadline for November 3rd as well as notifying parties to refer to the transcript of the October 28th hearing for further direction regarding the nature of

today's hearing. We did that, Your Honor. We filed the notice on October 29th, and that is Docket Number 1867.

Now, on October 28th, we discussed that we had already made substantial argument with respect to the motion and that the Court was not expecting a lengthy hearing today where we would reargue the motion. Instead, the Court had suggested that today would be more of an update and to address of course any new objections filed and also to discuss the potential revisions to the proposed order.

A limited number of filings were made since the October 28th conference, Your Honor. Those are set forth in the Debtor's agenda. We did file a brief reply. That is Docket Number 1951. Importantly, attached to our reply is a further revised proposed order.

Your Honor, in light of the remarks at the October 28th hearing regarding the nature of today's hearing, I won't present, or re-present argument, I should say. I'll just say for the completeness of this transcript to frame the relief, the motion that we're seeking is a request for very narrow relief. The Sackler families have entered into a settlement agreement with the DOJ that requires the Sacklers to pay $225 million in the aggregate. The motion seeks only to confirm that the payment is not prohibited by this Court, specifically that the payment does not run afoul of what we have referred to as the anti-secretion language

contained in the Court's injunction. This motion does not seek to have this Court approve the merits of the settlement as being -- or the merits of the settlement at all, but specifically as being good or bad or fair or unfair for the Sacklers or the DOJ. The settlement agreement is also completely independent of the Debtor's agreements with the DOJ. All of that was discussed on October 28th. And unless the Court has any further questions regarding what we discussed, I won't readdress the issues now.

As far --

THE COURT: Okay.

MR. UZZI: Pardon me. Were you going to say something, Your Honor?

THE COURT: No, I just said that's fine.

MR. UZZI: Okay. Thank you, Your Honor. As far as an update goes, I believe the principal reason why we continued the hearing today was to see if mediation was to progress and whether any progression would impact today's -- the need for today's relief.

And I can say, Your Honor, that we are progressing in medication, but mediation is not completed or there is not anything that I think I can say that impacts the disposition of this motion today.

The Court also did raise the prospect of what I'll call an easy disposition of the motion, being the DOJ

committing that the settlement payments will be used for abatement. That was also -- that concept was also the subject of the UCC and non-consenting states' further statement in respect to the motion. The DOJ did file a letter and deliver a letter to Your Honor that does address that issue. I'm sure the Court has reviewed that letter. The letter speaks for itself, and the DOJ is here today so I certainly don't want to speak for the DOJ. I will note that the letter does state in a number of different ways that the funds will be used to advance public health initiatives including abatement.

Your Honor, I'm not sure whether that is sufficient to satisfy the Court. Even if it's not completely sufficient, I hope it does go a long way in the Court's consideration of the motion.

As far as a presentation for today, we filed our reply brief, Your Honor. I won't restate what we've already said in there. I just will outline the high-level issues just to make a few points.

First, as the Court I believe likely remembers, prior to our October 28th conference, we did file an initial revised proposed order intended to respond to and hopefully address the objection filed by the UCC and non-consenting states in their original objection that they filed prior to the October 28th hearing.

At that conference, Your Honor, you had suggested some further revisions to the order. We've attempted to address that. We've attached the order to our -- a further revised order to our reply. We are hopeful that we did address the Court's concerns. We believe we've addressed, as we discussed at the prior hearing, the committee and the non-consenting states' objection. I am happy to discuss the revisions to the order if Your Honor has further questions.

Also, on October 28th there was some discussion on the intent of the anti-secretion language. That is the anti-secretion language, in our view, is not intended to prohibit the payments that we seek to make to the DOJ under the settlement agreement. Instead, it was intended to prohibit what I've referred to as the nefarious secretion of assets in a manner that would move the assets away from this Court's jurisdiction.

The Court correctly noted that we did not offer any transcript citations. So to complete the record, Your Honor, we did put that in our reply brief.

But as I said at the October 28th hearing, my views and the views of other counsel, whether it be Mr. Huebner, Mr. Preis, Mr. Troop, with respect to the intent of that language is secondary to, frankly, the Court's own views. It's the Court's order. And I don't anticipate that the Court, as I explained on October 28th, would have had

today's facts and circumstances in mind when that court was -- when the order was entered, I should say. But it is I think ultimately the Court's views that is most important here, including with respect to not only what that language was intended to mean when entered, but also the fact that we have asked for alternative relief today in the event the Court would conclude that that language did in fact prohibit the payments that we are seeking to make.

Finally, Your Honor, the UCC and the non-consenting states have filed a further statement where they now suggest that the Sacklers should be required to introduce evidence of the Sackler wealth.

Your Honor, we state in our reply that, notably, neither the UCC nor the non-consenting states -- well, let me first say, I'm sorry, that they already have a substantial amount of wealth -- excuse me, Your Honor. They already information regarding the Sackler's wealth, and they don't suggest that based upon their own knowledge that the submission of the evidence they request would in fact defeat the motion.

Your Honor, I submit their request here is similar to the original objection where they were seeking admission from us not for the purpose of this specific motion, but in fact to leverage this opportunity for some other purposes.

As we stated in our reply, Your Honor, the

evidence requested is not necessary for this motion. We submit that the correct analysis is to recognize that the DOJ is in fact in competition with all other creditors for the Sackler's assets, but that the DOJ also has potentially superior enforcement remedies to all other creditors.

Now, I addressed this again at the October 28th hearing, Your Honor. We have stated that we disagree with the assertions that have been made against the Sacklers. But to the extent that the creditors of the Debtors believe that they have strong claims, they need to recognize that the DOJ's claims then are similarly as strong. And they need to also take into consideration the DOJ's superior enforcement remedies. And when you do that, Your Honor, I think it's pretty easy to conclude that our settlement with the DOJ does not frustrate the ability of this Court to enforce any potential future judgement. In fact, it likely enhances it. Again, I made the argument on the 28th. It's also in our reply brief, so I won't further burden the record here.

I will note, Your Honor, though that in their further statement at Paragraph 9, what is essentially their prayer for relief is that they respectfully request that the Department of Justice and the Sacklers answer the questions raised regarding the motion.

As it relates to the Sacklers, Your Honor, we've

already answered those questions to them directly. They have the information, forcing us to put in evidence is not going to further inform their views as to the appropriateness of this relief.

Your Honor, I will close simply in saying that this is an important step in these cases. Resolution with the DOJ is a gating item regardless of the ultimate disposition of these cases. If we don't take the opportunity to lock this in now, there can be no assurances that we'll be able to do it again in the future.

Your Honor, in light of the Court's remarks regarding the nature of this hearing, I don't have any further argument, but I am of course happy to address any questions the Court has of me.

THE COURT: Okay. Why don't I hear the other parties first and then I'll -- I do have a couple questions, but why don't I hear the other parties first.

MR. UZZI: Yes, Your Honor.

MR. HUEBNER: Your Honor, this is Marshall Huebner. I guess as someone who is not opposed to the relief for specific reasons, it might make sense for me to go next, although I think I actually will be extremely brief.

Your Honor, may I be heard and can I be heard?

THE COURT: Yes, sure.

MR. HUEBNER: Okay, terrific. So, Your Honor, from the estate's perspective, which is the perspective we bring, obviously it's sort of governance and sort of what's best for the country and the like, the point from our perspective is does this likely increase or decrease the likely recoveries of and via the estate. And one of the issues that parties had from the beginning of the case, which was, as we'll talk about a little later on Item Number 3, is how much dilution will there be by the DOJ. And that has been reflected first and foremost in the term sheet that the Debtors filed over a year ago with respect to the framework agreement. And I think we were all waiting to see.

Unless I misunderstand it, and I'm pretty sure that I don't, the Department of Justice/The United States of America has actually required that its $225 million civil settlement with the Sacklers be incremental and in no way, shape, or form dilute or reduce the $3 billion-plus settlement that forms the basis of the framework agreement. From the estate's perspective, that's a very big deal because that dilution, you know, if it had been sort of, you know, the $3 billion-plus structure all in, as many feared and thought that it might be, and the question is, you know, now the estates are maybe only getting 2.775 plus upside. That would be a very different deal and the Debtors,

frankly, might have a different view. But it's not, because The United States insisted that the 225 the Sacklers are paying them directly in no way, shape, or form take away from the monies already agreed to in the framework agreement.

The second thing I would not -- and this is going to relate to the next hearing, so I'll say it quickly and be done -- is that this is really of a piece with the DOJ settlement with respect to the Debtors as well where the DOJ is essentially taking a fixed sum for itself and allowing, you know, all remaining recoveries including any and all upside and to further negotiate it with a resolution with the shareholders to stay with the estate and essentially go to other creditors. And so these two things fit together. You know, the Debtors don't really take a view on other aspects of the settlement.

As I discussed with the Court last time, the order is fairly heavily blacklined. In fact, it's extremely heavily blacklined from the version already filed. Many of those changes actually came from us. Because with the lens of the estate on, it was actually quite important. While for sure -- for sure -- and I want to be very clear about this, the UCC and the non-consenting states raised the issues to us in the first instance and sort of, you know, brought us into this, we were, frankly, moving night and day

on other things. And they filed the pleading and they flagged issues for the Court's consideration. You know, once we're in, we're in. And so we then sort of joined the party and sent riders and paragraphs and additional provisions. And the order in its current form, which is potentially three times the length of the one that was filed, the Debtors have no objection to it.

As Mr. Uzzi noted, the propriety of the settlement, the wisdom of the settlement, all that, not our issue at all. That's just not Purdue's function for any number of reasons. But with respect to the economics of the estate, the Debtors have no objection to this order being entered with the protection that we and the UCC and the non-consenting states negotiated.

THE COURT: Okay. I'll ask you because you're a little bit more neutral than Mr. Uzzi. At the hearing that we held last month, it wasn't entirely clear to me whether approving or granting this motion would have any positive or negative effect on the mediation of the Sackler issues that's ongoing. Given that there is no deadline in the agreement for court approval, and given that the motion was made on -- the request was made on short notice and I did have a couple of questions about the order as well as a question on how The United States was going to be using the $225 million, I put the hearing on for today.

I'm not asking you to comment on anything specific about the mediation that's ongoing, but do you believe that inaction and further adjournment would facilitate the mediation, or to the contrary, do you believe that approval would facilitate the mediation?

MR. HUEBNER: Well, I sure with you'd ask someone else instead of me.

So, Your Honor, let me answer you hopefully both carefully and to the best of my ability. This is a topic on which I think different people could have different views. And I think that depending on where one is sitting, one could have different views.

The Debtor's view is that this actually is salutary towards accelerating the case for -- I think at the end of the day -- and again, I'm extemporizing here -- the following fundamental reason. The Sacklers have a net worth of X. And that net worth is known. And between the DOJ settlement and the estate settlement, if we're able to reach a settlement that would otherwise (indiscernible), at the end of the day, they will pay Y. And either Y will be agreed to or it will not. And if it's not, we'll have to figure out something very different than what we've been talking about for 13 months.

I just don't think it can be argued with that if the DOJ, for example, demanded and the Sacklers have agreed

to multiples of the 225 -- let's say for example a huge portion of their net worth, which I know what it is, assuming their presentations were accurate, which I trust that they were, I just think it's just simple reality that that just needs a lot less elasticity in how much they would be willing to pay the estate.

For example, if the DOJ took all of their net worth minus $3 billion, then they couldn't even do the deal at hand because they wouldn't have the money left.

Obviously one could have a different view. And I don't want to suggest, god forbid -- as everyone in this case knows very well, I most assuredly have no monopoly on wisdom. But one could take the view that if the DOJ took ten times this, it would set the tone that we're coming after X, Y, or Z, and maybe that would make them more likely to settle at a higher number. And I think reasonable minds could differ.

At the end of the day I think the Debtor's view -- and it's pretty strongly held -- that this will facilitate resolution. That, frankly, leaving -- and again, I can't disclose their wealth, but leaving very material assets both to ensure that we negotiate both the existing deal to get to fruition, and presumably a different deal from the estate side if we are to get on board the creditors who have sworn a blood oath that they will never sign on to the existing

deal. We think that that actually is the way -- that is the way that we are looking at it.

And so from the estate's perspective, as I said, the lack of dilution to the estate in both this deal and, frankly, the Debtor DOJ deal and the fact that if you believe the media reports and the Sacklers have X billion dollars, then it leaves them with plenty of money to do a deal with the estate. And since under our deal, the DOJ is in fact allowing virtually all of what would have been its property to go to the estate, I kind of feel like that's where the action is and that getting this done and turning to the single hardest issue in these proceedings, which is is a price going to be reached that both the Sacklers and the critical mass of the Debtor's creditors, you know, enough to support confirmation, you know, we'll agree to proceed on a global settlement path, or is that just simply not possible? And after, you know, a year and a gazillion dollars, we need to throw in the towel and go in a different direction. We're nowhere near that crossroads right now. And we think this one, frankly, makes it less likely that we reach it.

THE COURT: Okay. Thanks. All right. I guess before I hear from the objectors, I did receive the letter from Mr. Fogelman writing on behalf of the U.S. Attorney for the Southern District, Ms. Strauss, laying out The United

States' understanding of where the $225 million would go or how it would be used.

I don't know, Mr. Fogelman, if you have anything more to say in respect to the settlement -- or this motion that is.

MR. FOGELMAN: No, Your Honor. This is Larry Fogelman on behalf of the U.S. Attorney's Office. We are prepared to answer any questions that the Court has.

THE COURT: Okay. All right. Thank you. All right.

Well, again, I think Mr. Uzzi correctly laid out the framework for this hearing. I don't really need to hear a lot a recap of what people argued last month, but I am happy to hear from the objectors.

MR. TROOP: Thank you, Your Honor. This is Andrew Troop from Pillsbury Winthrop Shaw Pittman on behalf of the non-consenting states. I am hopeful that my comments will cover the UCC's concerns, the Creditors' Committee's concerns as well. Mr. Preis will confirm that when I conclude.

Your Honor, I will be brief. We listened hard at the last hearing, and so let me address really just four points.

The first is with respect to the revised form of order. If the Court is inclined to grant the motion, then

we agree that the order addresses the specific issues and concerns that were raised at last month's hearing. And so we don't have comments on the order.

With respect to the Department of Justice and The United States, we appreciate the letter. But I think it goes without saying that we are disappointed that The United States cannot or will not make the same commitment that the non-federal public claimants had made with regard to dedicating funds to abate the opioid crisis. After all, that's why we're here and that's why there is this resolution with the Sacklers.

Finally, Your Honor, with regard to the issues on evidence and ability to pay. Your Honor, we understood the last hearing to require some presentation, evidentiary presentation with regard to the impact of the payment on those assets of the Sacklers that are available to pay judgements that might be entered by this Court or any other court against them.

And I start with a truism, Your Honor, grounded in the fact that I have no reason to believe that the presentations that have been made about the Sackler's wealth is inaccurate or are inaccurate. But that's very different than satisfying a burden to demonstrate that the provisions of the preliminary injunction with regard to a material payment had been satisfied on the record.

Secondly, Your Honor --

THE COURT: Can I parse that through? I want to make sure I understand you. Are you saying that -- I think what you're saying is that there is a difference between a presentation that's made, albeit with a great deal of seriousness behind it, to the committee, the states, et cetera and evidence under oath. Isn't that the point you're making?

MR. TROOP: That's the point, Your Honor. And to just follow that up for a minute. And I want to be very careful because I do not want to step over the line of disclosing anything that we've agreed we will keep confidential. But -- and I don't think that this will do this -- this will do that.

There is a difference between saying that the Sacklers have X and that X of what they have they believe are committing to being available to satisfy judgements. And so there is a distinction there that drives, is driven by defenses that might in fact be raised with regard to collection under judgements. And because there is no detail provided with regard to this payment, where it's coming from, is it being financed -- I think there was a lot in the press and a lot of statements made about a prior settlement where there was difficulty by the Sacklers in obtaining the requisite credit support to be able to make a payment --

that demonstrates that evidence is appropriate and required.

After all, Your Honor, they are seeking relief from your order. They are -- I believe my memory, Your Honor -- and I admit, I don't have the transcript in front of me. But I don't believe that you -- let me put it differently. I don't believe that the provision was intended, nor clearly does it say that it is effective only in connection with the nefarious secretion of assets. There is more to that provision than that. And our reference to it as an anti-secretion provision shouldn't be given a life of its own.

And so, Your Honor, it really isn't an evidence issue. But that really does fall into the fourth point, which is something that Mr. Uzzi addressed in part and Mr. Huebner addressed in part, and you raised by your question, I believe. And that is, is your approval of this relief now necessary, helpful, or hurtful with regard to the negotiation process?

And I start with the first, which is necessary, which we discussed last time, that there is nothing that requires the approval of this resolution now, nor is there anything that says it has a risk of going away with the passage of time.

Secondly, Your Honor, the impact of approval, particularly in light of the lack of evidentiary basis, but

disputes that I can't because of the mediation privilege and other provision of the protective order get into, could -- I won't say make it impossible to reach a conclusion, but I can say that it will make it more difficult. It is, frankly, as Mr. Huebner said -- and I'm trying not to get into the argument about the next matter on the agenda. But Mr. Huebner I believe acknowledged that it and the DOJ settlement are intended to drive a particular conclusion in this case, drive towards a conclusion in this case, and a particular conclusion in this case.

And as I said at the last hearing, unlike the federal government, which was not constrained in its investigation, was not constrained in its ability to pursue its police power actions, every other creditor was constrained on the former, and every state was constrained on the latter. And they were restrained for the purpose of advancing negotiated resolution in this case. And I think, as I said last time, Your Honor, effectively not permitting the Sackler resolution to be consummated now without any evidence that doing so actually poses a risk advances that negotiation goal.

And, you know, I think that we are often -- we being the non-consenting states -- described as the one -- I think in some presentation, you know, people were described as having a blood oath against certain things. And I'm not

sure where that blood oath is viewed, since we're fully engaged on the Sackler issue, on the future of Purdue issue. And that's not going to end.

So I do think, Your Honor, that not granting this motion now facilitates, fosters that negotiation process for all the parties that are involved. Us, the Sacklers, the Debtors, the Creditors' Committee, the ad hoc committee of states, the MSGE. And we would ask you to underscore your previous orders intended to do just that by not approving the motion at this time. Thank you.

THE COURT: Okay. And I appreciate you're constrained because you're in the middle of negotiations, plus you've received the information that you received in confidence regarding the Sackler's finances.

But it appears pretty clear to me that even though this sum, this amount of money is that -- it's money, it's cash and therefore obviously the highest form of collectability, in the important area of the amount of the payment, it's a relatively low amount. I would understand the argument much better if the amount was much higher. Then I would understand what I think you've been saying to me. But it's hard for me to see that this amount somehow skews a negotiation which in fact it would appear to me gives the states the ability to say, you know, not only do we want more, but you have more to pay.

MR. TROOP: Your Honor, have you paused because you want me to respond?

THE COURT: Yes.

MR. TROOP: Your Honor, I think that is surely something that may be advanced in the context of negotiations and discussions. But let's take a different example. Let's say the Sacklers have ten dollars.

THE COURT: Well, but they don't.

MR. TROOP: No, no, I know. But hang on. Just --

THE COURT: Okay. You're using a hypothetical. Okay.

MR. TROOP: I'm using a hypothetical, Your Honor. Okay?

THE COURT: Got it.

MR. TROOP: But let's say the Sacklers have ten dollars. And then let's say that they say $9.75 of that $10 is beyond your reach. And we have 25 cents that is not beyond anyone's reach. And they're talking the 25 cents and paying that to the Department of Justice. That does have an impact potentially, and a material impact on the ability to collect -- I'm sorry, I don't know who is in the background.

THE COURT: Someone should put their phone on mute. We are hearing some background noise.

I understand your point.

MR. TROOP: And, Your Honor, again -- and so I

don't need to say anything else, Your Honor. Thank you.

THE COURT: Okay, all right. Thank you.

MR. UZZI: Your Honor, it's Gerard Uzzi. May I U.S. --

THE COURT: I'd like to hear from the objectors first and then you can respond, Mr. Uzzi.

MR. UZZI: Fair enough, Your Honor.

THE COURT: If there's anyone else. I know Mr. Troop said he was -- he hoped he was going to make the Creditors' Committee's point too, but if there are any other objectors that wand to add to what Mr. Troop said, you can go ahead.

MR. QUINN: Good morning, Your Honor. It's Michael Quinn of Eisenberg & Baum for the ad hoc committee on accountability. Is it all right if I speak?

THE COURT: Sure.

MR. QUINN: Thank you. Your Honor, like the parties before me have said, and specifically for us, you've already heard our objections to this. All we suggest is that it would be better for the Court to see and approve all the pieces of the plan together. And that's all we have for you on this motion, Your Honor.

THE COURT: Okay, thank you.

Okay, I think that does leave you, Mr. Uzzi, then.

MR. UZZI: All right. Thank you, Your Honor.

Just two -- I think you made some of the points I was going to make in response to Mr. Troop's argument. So I just want to make two other brief points.

The idea that there's no risk in delay is just false. As I discussed at the October 28th hearing, the settlement agreement does give The United States a recission right. Now, we could all debate in the abstract the breadth of that, but we bear the risk of the ultimate outcome and the potential exercise of recission rights. So this isn't without risk. And I just want to make that point.

The second point that I wanted to make was as it relates to collectability, we had discussions with Mr. Troop and the UCC regarding those issues prior to the October 28th hearing, and we made several revisions to the order to address that issue. Because, as I said at the October 28th hearing, and I think as the Court acknowledged, we weren't seeking and we are not seeking to gain any sort of litigation or tactical advantage here with the manner in which we made these payments. And so we put in a catchall provision of Paragraph 6 of the odder that allows this Court, to the extent that the manner in which we made the payments are later determined as somehow prejudiced, Mr. Troop's clients or any other party in interest, that this Court can order a reallocation. So I think we've addressed that issue already, and many other issues in the way that we

had revised the order prior to October 28th and how we further revised it as a -- in response to the October 28th conference.

Your Honor, unless you have questions for me, that's all I wanted to add to the argument.

THE COURT: Okay. All right. Anyone else?

MR. TROOP: Your Honor, just to be clear -- and I believe I'm quoting from the motion here, the Sackler's motion -- the only way that The United States can rescind the agreement is if you deny the motion to confirm, if you don't grant it in full, or if the relief you grant is inconsistent with the terms and conditions of the agreement. Deferring ruling would not trigger any of those requirements or give right to rescind. And we are stuck with the document that we have that we didn't negotiate or a part of. But it is what it is. Just so that's in front of you, Your Honor, as you think about this.

THE COURT: Okay. Well, that raises two points. And I guess they're questions for Mr. Fogelman.

First, the order that was proposed as part of the motion has been changed to address certain objections to the motion and points that I had raised. Is there anything in the proposed order that would cause The United States to exercise a revocation right? It's not exactly the relief that was sought, in other words.

MR. FOGELMAN: Your Honor, this is Larry Fogelman on behalf of the United States Attorney's Office. We have reviewed the proposed order and we are fine with that order, Your Honor.

THE COURT: Okay. All right. The other question will put you more on the spot. Obviously there is a strong incentive for The United States to abide by agreements that it enters into, even if those agreements are subject to subsequent court approval. But ultimately DOJ acts on behalf of the government. Governments can change their minds. Is there an ability on the United States' part if this delays, say, into January after the new administration to review this agreement if it's not been approved already?

MR. FOGELMAN: Your Honor, the Government would simply have to reserve all rights that it has under this agreement. I think Mr. Uzzi pointed out that at the end of Paragraph 2 there is a sentence that deals with recission. I'm not prepared today to opine on its meaning or contours. I am prepared to say that we reserve all rights that we have under Paragraph 2 and the rest of the agreement.

THE COURT: Okay.

MR. UZZI: Your Honor, Gerard Uzzi again. If I could just make one or two additional points regarding mediation, Your Honor.

At least from our standpoint -- and I hope this is

understandable on its face -- our ability to progress. I mean, the Sackler family's ability to make determinations in the mediation is impacted by this or impaired to the extent this relief is not granted. I think it's very easy for others to say, oh, well, no, we can just let this kind of hang out there and we'll see. And no harm, no foul. That's not our position, Your Honor. And I don't know any other way to demonstrate that than to ask everybody who is making that argument to just put themselves in my shoes and advising my clients and the decisions they have to make with respect to having what Mr. Troop himself has said on multiple occasions, resolution of a 900-pound gorilla issue. That was Mr. Troop at the chambers conference in relation to whether mediation should go forward, that we shouldn't move mediation forward because we didn't know where the DOJ was. Well, we know where the DOJ is now. And I just think there is an extreme inconsistency in those positions.

The second thing. Again, nobody wants to move this case along faster than the Sackler families. And to the extent that it would move mediation along, you know, maybe, just maybe it would be okay. But the relief before the Court is really a very simple request. It's a very narrow request. And the request, again, is simply whether or not this Court has prohibited us from making this payment. And of course, in the alternative, if it has, to

let us make this payment.

And I would just ask the court to permit us to make this payment. We don't believe we're -- or, frankly, Your Honor, just to confirm that we're not prohibited to make this payment, I do think it will have a materially negative impact on mediation. We are all speculating on that point. But it's not a risk worth taking I submit, Your Honor.

THE COURT: Okay.

MR. HUEBNER: Your Honor, if I may. I was very brief before. Let me just say one last thing which I think is also relevant. Because I don't think -- the cul-de-sacs I think it's not helpful to get into. But obviously, you know, it goes without saying I was there drafting the Debtor's order on this injunction. And it was very clear to everybody -- in fact, we said it multiple times and the document is clear on its face that the injunction just did not apply at all to the DOJ or to any DOJ-related matters either against the Debtors or against others.

The DOJ itself could have taken any number of actions during this case. I don't want to speak to what their powers are. Freezing, seizing, grabbing, whatever of either the Debtors or the Sacklers. And I think there's no question in the world that nobody could have stopped them in the bankruptcy system if they were compliant with applicable

law.

In general I think sort of the lesser is included in the greater. And so since the injunction didn't apply to the DOJ at all -- and frankly, I think that the transcript and many other cites that parties have provided does show from the parties who negotiated what they at least believe it was for, it seems to me that the DOJ settling and agreeing to take 225 instead of taking 225 or 2.25 or 5.5 or 8.5 just doesn't seem inconsistent to me with the spirit of what people agreed to. And obviously as Your Honor knows, the dissenting states ultimately agreed to voluntarily be bound to the terms of the injunction as opposed to being bound. But everyone understood -- and I think the order has now been amended like 17 times -- it was never applied to the Department of Justice, not for one minute. And the notion that now an anti-secretion clause from 14 months ago would bar a fully publicly-disclosed, technicolor, every document attached to press releases settlement with The United States of America seems to us, separate from, you know, the prudential questions which we also agree that sooner is much safer and better for the estate than later, it just seems to stretch a bankruptcy court order, frankly, far beyond its snapping point in terms of intent and, frankly, possibly in terms of jurisdiction.

So I don't want to unduly put my thumb on the

scale. I was hoping not to talk at all. But I do think that from the estate's perspective, the proponent of this order and the entity that frankly hopes to receive billions of dollars from the Sacklers, ideally pursuant to a fully-consensual deal, yes, I think this is an extremely important milestone to lock down and then climb on to the next level from.

THE COURT: Okay. On the order before me, I did have one change that I want to run by you. If, Mr. Uzzi, you have it there?

MR. UZZI: Yes.

THE COURT: All right. It's in Paragraph 3. And I would change it to read as follows just so there's absolutely no confusion. I would just have it begin with a Roman I, "In entering this order, the Court is not approving the settlement agreement, nor is it making any findings of fact or conclusions of law with respect to the settlement agreement with the exception of the Court's declaration in Paragraph 2 hereof." And then it would continue on with the rest of the paragraph.

The way it reads now with the exception at the beginning, there is a suggestion I'm approving the settlement agreement somehow, which I'm not.

MR. UZZI: Yes.

THE COURT: So I would just make that change just

--

MR. UZZI: Yeah, that's fine, Your Honor. We can make that change.

THE COURT: All right. So let me go then to the ruling on the motion.

I have before me a motion by the Sackler families as defined in the motion that payment by them of $225 million under their settlement with United States Department of Just on behalf of The United States is not prohibited by this Court. And more specifically, is not prohibited by Paragraph 13 of the amended stipulation entered early in this case among the Debtors, the Official Committee of Unsecured Creditors, and certainly related parties, including the Sacklers, which was then incorporated and continues to be incorporated in the preliminary injunction order that I've entered in this case.

The relevant language in the amended stipulation is as follows, and it pertains to the Sackler's agreement under that stipulation. Prior to the ate that is 30 days after the expiration of the stay period, i.e. the expiration of the preliminary injunction, no covered party -- and that's a defined term in the stipulation, but it includes the movants here, the Sackler family -- shall take any action with respect to any material amount of his, her, or its property that is located inside or outside of The United

States with the intent or material effect of frustrating enforcement of any potential judgement of this Court in these Chapter 11 cases or any other actions pending against them in any other court or jurisdiction.

The motion argues and the supplemental pleadings filed in support of the motion argue that this provision, which was indeed repeatedly referred to by the parties when they were explaining the amended stipulation to me in court and thereafter as the anti-secretion provision wouldn't apply at all to a $225 million payment to The United States under the DOJ settlement because this is a public payment on notice to parties in interest and is not a case where the Sacklers are hiding or secreting assets to take them out of the reach of the parties in interest in this case or in this court or any other court of competent jurisdiction in respect of claims by parties in interest in this case against the Sackler family members.

It does appear to me when reviewing the relevant transcripts that most of the discussion is as the movants have previously asserted and continue to assert, that this provision was really intended to prevent the Sacklers from hiding their assets or putting them out of the reach of judgement creditors.

On the other hand, not all of the references are to that effect. And, indeed, the language as written in the

stipulation states, "with the intent or material effect of frustrating enforcement" would suggest that it covers more than simply improper hiding of assets.

That doesn't mean that the motion should be denied, however, because the entire provision needs to be construed and applied to the particular facts with regard to this $225 million payment in the context of this case.

Again, it prohibits any action with respect to any material amount of the covered parties' property. So there is a materiality element there. And then it also says that that transfer cannot be with the intent or material effect of frustrating enforcement of any potential judgement.

As I noted, one way to resolve the motion would be to show that the $225 million is not a material amount in the context of this paragraph. Obviously on its face, $225 million is a lot of money, and to I think anyone, even Bill Gates or Warren Buffett, it is a material amount. On the other hand, it appears clear to me that the Sacklers' financial condition has been sufficiently vetted to show that they have materially more assets than the $225 million.

I believe the only concern or at least the addressed concern by the objectors on this point, i.e. this materiality point, is twofold. One, the presentations have not been made under oath before a judge, so they could be wrong. But of course the objectors have substantial

resources to check up on the presentations.

And also it may well be the case that $225 million in cash is proportionally more material when one takes into account the issue of collectability on the other assets which I'm presuming or assuming, and I believe I can do so reasonably in large measure would need to be converted to cash to be collectable.

Another way to resolve the motion -- and I know that at the hearing and it was clear from the objector's response that they agreed -- is if we could be reasonably confident that most if not all of the $225 million would be applied promptly to help abate the opioid crisis, which is something that the parties bound by the preliminary injunction order have agreed in their mediation to date as reported by the mediators.

Since the prior hearing on October 28th, I've received a letter on behalf of the U.S. Department of Justice through the U.S. Attorney for the Southern District of New York explaining the constraints on the Government in how they would apply the settlement funds, but noting that with the exception of three percent which would be deposited into the Department of Justice's working capital fund, which I assume goes to general purposes for the DOJ, the remaining portion of the $225 million would go, under federal law, to federal healthcare programs.

Mr. Fogelman, who sent the letter on behalf of the DOJ, is careful to note that those programs are not exclusively devoted to opioid abatement, but that they include material opioid abatement programs, initiatives, and efforts.

One also notes I guess that money for healthcare is somewhat fungible. If you have more money for healthcare X, that may free up money for abatement, healthcare Y.

I agree with Mr. Troop that this letter is appreciated and helpful, but not dispositive. Although it appears to me that it could not be dispositive given the state of the restrictions that is imposed by the law on the federal government on how the settlement proceeds can be used. But I think it is an important point. It's not going for federal buildings or to build a wall, for example, or anything else. It's going to healthcare. Except for the three percent that I mentioned.

I will trust that those who review those budgets in Congress, having expressed their strong desire to abate the opioid crisis, would make sure that to the extent they can this money can be used as a fungible matter at least to enable more funds, the bulk of the funds, the fund to go to opioid programs.

That leaves then the last way that the motion could be granted, which is whether this payment is made with

the intent or material effect of frustrating enforcement of any potential judgment.

It is clear to me it's not made with the intent of frustrating enforcement. I agree with Mr. Uzzi that the U.S. Government is a potentially superior competing creditor to the other creditors in this case, including vis-à-vis their claims against the Sacklers.

It comes down to whether this has a material effect of frustrating enforcement of any potential judgement. From everything I know on the record in this case generally and in connection with this motion, the $225 million settlement, to the contrary, would facilitate the rights of others, starting with the Debtor itself, to pursue their claims against the Sacklers, either, again from the Debtor's side under Chapter 5 of the Bankruptcy Code or direct claims against the Sacklers that various parties in interest might have, including the objecting states.

It is clear to me that the aggregate amount here leaves much greater value available for the debtors and third party creditors to obtain, either by negotiation, or if negotiations fail, if and when judgements are obtained, by collecting on a judgement.

Mathematically, any payment would have the effect of frustrating enforcement to the extent of that payment. But what is important here is that it appears clear that the

Department of Justice, knowing the status of this case, being an observer in the mediation, has negotiated an agreement that other than this amount leaves the negotiation and/or enforcement of claims against the Sacklers in the hands of the other parties in interest in this case. And it is further clear to me that this amount leaves much more available to those parties in interest. One could well argue then that rather than frustrating enforcement, this settlement actually enhances the ability of the other parties in interest in the case to collect on judgements or settlement from the Sackler family members.

Clearly, cash is the most liquid form of an asset, and therefore the most collectible form of a judgement. But to me that's overshadowed by what I believe to be the case here and that has clearly not been argued by anyone to the contrary, which is that the Sacklers have magnitudes of value now available to other parties in interest, starting, first and foremost, with the Debtors for their creditors because of this settlement.

It's also argued that the Department of Justice, in addition to being a competing creditor who has settled for a relatively modest amount in light of the overall picture of the Sackler's assets, is a potentially superior creditor, i.e. has superior rights. Of course this settlement is not a settlement of criminal liability. I

have not spent a lot of time analyzing whether the DOJ, if this settlement was not approved -- I mean, if this payment was not approved, excuse me -- would have the ability to step ahead on civil claims of the other parties in interest in these cases.

But it is clear to me that from the commencement of these cases, indeed, from before the commencement of the case with regard to the so-called consenting state and governmental groups, a successful to those parties and to the debtors resolution of The United States' claims was always an important condition and was always outside of the process applicable to the other parties in interest, which suggests that, indeed, the DOJ does have potentially superior rights.

In light of the record before me and my sense of the importance of granting this motion, I've also taken into account the effect that it would have on the ongoing mediation of the remaining key issue in this case, which is whether there will be an agreement that would enable a Chapter 11 plan to be confirmed between the key creditors and the Sacklers. Again, that mediation is ongoing. I have no reason to doubt that the parties are engaging in it in good faith, that they are, again, well represented, and that the mediators are remarkably talented.

The last thing I would want to do is approve this

motion if it would cause that mediation to be adversely affected. Based on everything I've heard, and my sense of the dynamics in a mediation of this sort generally, I conclude that permitting this payment would not materially impair the mediation, and indeed by setting this bar for the Sackler's liability to the government facilitate the resolution as between the remaining parties in interest in the case, vis-à-vis the Sacklers.

They have it in their power know knowing what the result is to negotiate for the rest as much as they believe they can obtain and decide whether they've gotten enough in light of the defenses and the cost of pursuing litigation. I don't believe a payment of $225 million will retard that process. I do believe there is a good chance that it will improve it and facilitate it.

I will note further that the agreement itself contemplates the possibility that a payment to the Government, the U.S. Government, might be disgorgeable under Section 550 of the Bankruptcy Code when the United States is an immediate or mediate transferee or initial transferee. Of course you have (indiscernible) the deepest pocket in the world.

So it appears to me that if in fact I'm wrong and this payment is somehow improperly frustrating enforcement, 550 would at least facilitate recovery under Section (a)(2) of that section if it can be established that it was

received with knowledge of the voidability of the transfer avoided, i.e. the fraudulent transfer to the Sacklers in the first place.

If clearly there's consideration for the transfer, the transfer itself to the government would not be a fraudulent transfer, although, of course, there could be a preference.

So I believe that the motion should be granted on the basis that it does not have a material affect of frustrating enforcement of any potential judgment of this Court or any other Court against the Sackler family members who were parties to the settlement and would be making the payment given the size of the payment and what I believe to be the size or the value of the Sacklers other assets.

So, Mr. Uzzi, you could email the revised order, revises we discussed about half an hour ago with regard to Paragraph 3 to chambers for entry.

MR. UZZI: Yes, Your Honor.

THE COURT: And you should just cc the objector's counsel and Mr. --

MR. UZZI: Yes, Your Honor.

THE COURT: -- do that. Again, I want to make crystal clear, and I think I did so even more with regard to my comment on Paragraph 3, I am not approving the settlement agreements here. I don't have jurisdiction to do so. It's

not before me, and my entry of this order does not lock in any result in this Chapter 11 case. This request, this motion was really limited to the specific applicability of the language that I quoted to these particular facts and this particular payment.

So why don't we move then to the last matter on the agenda.

MR. HUSNICK: Thank you, Your Honor. Actually, Your Honor, just to do a sound check since this one obviously will be pretty extensive. Am I coming through loud and clear for the Court and others?

THE COURT: Yes, and I hope I was when I was giving that ruling.

MR. HUSNICK: Yeah, you sounded great.

THE COURT: Okay.

MR. HUSNICK: Okay. So, Your Honor, that brings us to the third item on the agenda. And actually in looking at the agenda letter, I realize there's one micro-thing in advance, which is I guess we did ask to file -- I didn't even know this, to be candid, think that's embarrassing -- that we had to file a motion for leave to exceed the page submit in our omnibus reply brief. I think that that motion sets forth the basis for the relief.

We're obviously responding to multiple parties raising multiple issues on a very serious, ultimately, you

know, multi-multi-billion-dollar suit and a case of national import. I don't believe there were any objections filed to that motion for a few extra pages in our reply brief, and I guess I would ask to the extent that it needs to be granted, that it be granted.

THE COURT: All right. Given the length of the -- the cumulative length of the objection which the reply brief replied to, I'll grant that motion.

MR. HUSNICK: Thank you very much, Your Honor. So onto the main motion for today.

Your Honor, today is, in fact, a monumental day for these estates. While we'll, of course, address the objections, it simply cannot be gained to say that the settlement with the Department of Justice is a milestone. I believe that's critical and I'm positive that the allocation agreements announced in the mediator's reports on September 23rd, 2020.

Today's hearing is underlain by one tectonic indisputable and undisputed fact: The United States of America has claims, rights, powers, and abilities that no other party in this case has, and it alone could take actions and, if successful, could very well result in all other creditors in these cases receiving little to no recovery, quite possibly even zero, rather than the billions of dollars they are currently on track to receive.

Had the DOJ decisionmakers landed in a different place, today would have been a very dark day for this case and its creditors.

Moreover, the DOJ settlement before you is undeniably aligned to a truly extraordinary degree with the vision of this case that this Court and virtually all of the Debtors' other stakeholders have laid out at hearing after hearing over 14 months.

What are the primary elements of that vision and how are they addressed by this settlement?

One, Purdue should admit responsibility for unlawful conduct and be held accountable for what so many governmental and private parties have accused it of; that is accomplished.

The era of, quote, "Purdue has never admitted liability or been found liable for unlawful conduct since 2007," closed quote, can end today. And the relief that we seek includes Purdue moving swiftly to plead guilty to multiple serious felonies, and no individuals are receiving releases under this settlement.

Two, Purdue should not emerge from Chapter 11, something very important to certain of our creditors, ironically, quite possibly, the objectors most of all; accomplished.

The DOJ deal requires that Purdue Pharma L.P.

itself, not a subsidiary, not an affiliate, itself plead guilty to multiple serious crimes and be excluded from participation in Federal healthcare programs. On the effective date, Purdue Pharma will not be emerging, and its assets will be transferred to a clean new entity.

Three, a public document repository; accomplished. Today marks the sixth hearing before this Court stretching back to the very first month of the case. I was actually the first one to raise it, if my memory is right, at which I had represented that there will be a public document repository on emergence.

When a lawyer represents something to a Federal Court on behalf of a client, that is a bankable promise. It is now also a binding obligation, assuming that the Court enters the order today, under the DOJ deal. And to the avoidance of doubt and let me say this with crystal clarity loud and clear to the many people listening: The public repository obligations required by the DOJ settlement are the minimum; they are not the maximum. We stand ready when the time is right to negotiate the contours of what will go live soon or after the effective date -- on or soon after the effective date, which will surely include tens of millions of pages and will be available to the public for years.

Goal number four, that the DOJ not derail a

potential global settlement by taking so much estate value for itself or otherwise destroying distributable value that the rest of the deals just don't work. We actually already talked about this, Your Honor, with agenda item number two. Accomplished. I will have much more to say about this in a few minutes. But suffice it to say that the DOJ settlement reflects an extraordinary wise and public policy-oriented outcome that is unquestionably in the best interest of all creditors and the American people despite ability to have taken off of the top and independent of the bankruptcy system, billions of dollars of value for the Federal Treasury or to take other acts that would destroy billions of dollars of stakeholder value.

The United States in America is, in essence, agreeing to take only $225 million from the Debtors for itself on account of its forfeiture rights and what are expected to be modest general unsecured claim recoveries in the complex of these cases, as long as what, as long as $1.775 billion it is otherwise owed is instead rerouted to where every single stakeholder in this case, presumably the states most of all, wanted to go to state-centered abatement of the opioid epidemic.

And for its two general unsecured claims, which will undoubtedly be a very small fraction of the unthinkably large claims pool I will describe later, the United States

has agreed to take treatment in line and no better than varices by the Debtors hundreds and thousands of other general unsecured creditors, all claims the DOJ has, to priority, to non-dischargeability and to access to the Debtors' assets notwithstanding 541 are, in essence, waived.

This DOJ deal, in fact, Your Honor, makes everything else possible. The Debtors stand firmly and immovably behind the private side cash-out deals announced without full detail on September 23rd. Almost immeasurable efforts went into making those deals happen. The non-Federal governmental entities, including AHC, NCSG and the NSG spent months negotiating with the five private side groups and other entities and reached appropriate cash-out deals with all five private side groups.

The Debtors and the UCC spent thousands of hours assisting and the estate spent tens of millions of dollars to facilitate and help bring this to fruition. These private side cash-out deals, which include the hospitals, NAS Children, TPPs, ratepayers and, of course, personal injury claimants will provide these parties in material cash distributions, most of whom have agreed to direct-to-abatement, while still allowing the substantial majority of the distributable proceeds in these Chapter 11 cases, including the funds to be received under any deal from the shareholders, to be channeled via state and local

governmental entities directly and exclusively to abate the opioid crisis and nowhere else.

Unless something happens, Your Honor, that I cannot foresee, the Debtors are not budging from these private side deals, not today, not tomorrow, not ever. More on that a bit later.

Primary goal number five: abatement, abatement, abatement. This is the grand answer to the why of the transactions before you today. There are more than 330 million Americans, and while there's only one of each of us, we are all represented by many governmental officials in this case. To take myself as an example, I may well have had claims filed on my behalf by each of my school district, my city, my county, my state, federal government, but there is still only one of me.

We certainly would not purport to speak for the federal government; they are, of course, more than capable of speaking for themselves. But our understanding of the DOJ's approach arises out of its, quote, "no piling on" closed quote, policy, which formally holds that as long as other governmental entities are themselves receiving money in respect of similar allegations, the DOJ may choose to step back -- way back -- and not take the money for itself. In other words, the distributable value must go towards claims on behalf of the same 330 million Americans, but it

does not need to go through the federal first.

This power fee is laid out in the Department of Justice manual where the DOJ states its policy that, and quote, "We will coordinate with and consider the amount of fines, penalties and/or forfeiture paid to other federal, state, local or foreign enforcement authorities that are seeking to resolve a case with a company for the same misconduct," closed quote. Section 1-12.100.

Consistent with that policy, the DOJ filed a statement of interest in the (indiscernible) in early 2018, specifically noting that its goal in the broader opioid litigation would be to, and I quote, "Assist parties in carefully crafting non-monetary remedies that'll effectively combat the opioid crisis on a nationwide basis in accordance with appliable law," closed quote. U.S. memorandum in support of motion to participate in settlement discussions and as friends of the court, as per the docket site, it's 212-1. There's more detail, and I can provide it later if it's needed.

And this, Your Honor, is exactly what they have done. Your Honor doesn't forget much, so I'm not going to read you and belabor the record with the quotes from the bench and actually the states at many hearings, including October 10, 2019, October 11, 2019, November 6, 2019, January 24, 2020, June 23, 2020, September 30, 2020, and

October 28, 2020, again and again emphasizing that a state-centered, abatement-centered outcome where most of the Debtors value goes exclusively to address the opioid crisis is the prime directive of these cases. And today, Your Honor, we step massively and monumentally closer to that goal.

Before moving to the substance of the objections, I think it makes sense to briefly describe the timeline of what I've had with the DOJ, since there has been both misunderstood and mischaracterized in some of the few objections that were filed.

What we are seeking today is authority to enter into the civil agreement and the plea agreement, which together make up our comprehensive DOJ resolution. If that authority as granted, we will immediately enter into the civil settlement agreement. The DOJ will then request the hearings to be scheduled within seven days before the Federal District Court in New Jersey where Purdue Pharma L.P., not a subsidiary and not an affiliate, will itself plead guilty to the three felonies laid out in the criminal settlement documents in accordance with the plea agreement.

The next step is the confirmation hearing which, as sad as it is for me to say, is still months away. Then Purdue and the federal government will request a sentencing hearing to be held at least 75 days after confirmation, at

which the parties will together request that the plea agreement be accepted, the agreed sentence be imposed upon Purdue, and a judgment of conviction entered against it.

As the papers laid out, the agreed-upon sentence consists of a $2 billion forfeiture claim -- more on that in a minute -- and allowed unsecured claims on the criminal side totaling $3.544 billion. However, as the papers make clear, the federal government is agreeing to take only $225 million in cash; on the forfeiture claim filed in the amount of $3.5 billion and settled in the amount of $2 billion as long as a small number of entirely reasonably, though admittedly not universally supported, conditions are satisfied.

And as the structure I've just described anticipates and our amended 1999 order makes clear, the allowed criminal claims, including the forfeiture claim, both come only after confirmation. What the DOJ will receive immediately is the allowed unsecured, unsubordinated civil claim of $2.8 billion, which none of the objectors really take issue with, independent of objecting to the deal generally.

So, Your Honor, one very good news update, which is while the hearing was going on, as is often the case, you know, some of us were double testing and triple testing. And I'm delighted to report that the claim -- the objection

filed by the White & Case firm on behalf of the personal injury claimants is now fully resolved. We have been filing, that the Court surely noticed, amended orders, you know, maybe too many. Maybe we should have skipped the one this morning, but we were working as fast as we can and, frankly, it hit the docket, you know, as things were still a little bit midstream. There's, I think, one more word that's changing; it's not very material and we're in the process of getting that filed.

So the good news is, one objection is down and we will soon file a cumulative blackline showing the incremental edit that, as you might imagine since White & Case negotiated from the perspective of a major player group, that sort of, you know, in favor of the estate as it were. It's certainly not a give-back or a degradation of the deal from the estate's perspective.

The objectors, at least some of them, misunderstood when the DOJ would be receiving it's allowed forfeiture claim, and from Davis Polk's perspective when several count and experienced lawyers call us and raise the same question or confusion, we assume that we did something that needs improvement. So we jumped into the form of order and worked with the DOJ to have it far more clearly provide exactly when the DOJ's criminal forfeiture claim and fines are allowed, and also to clear up other potential

misunderstandings or ambiguities that either re-noticed on a post-filing lead or others brought to our attention.

With respect to the blacklined order filed, Your Honor, which I think is on the docket, let me just quickly walk the world through it and then keep going.

Paragraph 3, as I already described, now clarifies that the $2 billion forfeiture judgment claim is not allowed until both later of the entry of judgment of conviction in accordance with the plea agreement -- that's the thing that's supposed to happen 75 days after confirmation, so it's the later of that hearing -- and the entry of the confirmation order. More on that later because it's a critical and important feature of the DOJ resolution.

Paragraphs 4 and 5 are essentially the same. Note again it just further clarifies, so there's no possible doubt on anyone's part, that the criminal fine claim would not be allowed if Your Honor entered the order we are seeking today or tomorrow.

Paragraph 7 contains two clarifications that I think are actually quite important. First, the order as originally drafted required that the plan provide for various things, including separate classification of the DOJs claims. That was a non-trivial drafting mistake for which, as the ultimate senior member of the Davis Polk team, I'm happy to take responsibility for and, I guess, admit or

apologize. We just drafted the order wrong in a fashion not ideal.

The deal, which the order now says, is that the DOJ can rescind the civil settlement agreement if the plan fails to provide for certain treatment. This is not only what the civil agreement says, but we actually think, in fact, is the complete answer to the sub rosa issues raised in the objections that I'll talk about when I get to the objection.

The second changes that the DOJ requested that the order clarify that they can rescind the plea agreement if the Debtors materially breach it, which again was always the deal. You know, it's basic contract law and I'm sure it's federal criminal law that if we breach our agreement, they're not bound.

The changes to Paragraph 8 merely clarify what the law actually says. The stay waiver does not allow them to come or drive up with a truck and take value and assets on account of their unsecured claims. It allows them to do what arguably they could probably do anyway, which is continue the investigation and litigation of their civil claims up to the point of monetary judgment, but not the execution or collection. And again, I remind the Court and all parties, the DOJ is not bound by our current injunction, so this is not a carveout. I think it's just the way the

world works.

Finally, there's Paragraph 9, which says two things: one, it confirms for, like, the fourth time that the criminal and forfeiture claims are not allowed until the later of the judgment and conviction and confirmation of the plan; and clause (b), which we actually Mr. Shore and White & Case a vote of thanks for. He caught the fact that if the claims are not allowed until after confirmation, which everyone should love for any number of reasons, but they actually need to vote. So we actually provided so for the essentially temporary voting allowance in the new section in Paragraph 9.

So, Your Honor, in the face of this extraordinary deal, why --

THE COURT: Can I interrupt you for -- I'm sorry, Mr. Husnick. Can I interrupt you for a second?

MR. HUSNICK: Of course.

THE COURT: Mr. Fogelman, is this -- all this language in the revised proposed order acceptable to the DOJ?

MR. FOGELMAN: It is, Your Honor.

THE COURT: Okay, very well. So, you can go ahead, Mr. Husnick.

MR. HUSNICK: It would have been a pretty bad day if I got the wrong answer.

So, Your Honor, the last thing I guess I should say is that the late breaking changes that actually happened while the other matters were being argued actually are changes in reflect of -- in respect of, excuse me, the paragraph that relates to what happens essentially if the plan is not confirmed, and it makes the standard I think a little bit tougher by adding a materiality qualifier. I'm trying to get that order up on my screen, so I don't get it wrong.

But as I said, we'll be filing a blackline in a couple of minutes that will show -- I think it's actually only a one word change from the order entered this morning, so it is obviously another pro-estate change that was negotiated. And again, I think I can firmly represent to you since there were emails flying around all through the hearing that the changes are acceptable to the DOJ.

They're found in Paragraph 6, Your Honor -- I now have successfully managed to call it up on my screen -- where there's a proviso in the first sentence of Paragraph 6 that, again, against the originally filed version, I'll help explain the changes. It used to say provide that PPLP defaults on any material obligation, it said under this agreement; that was just a typo because this is the order and not an agreement, so it needed to say the civil settlement agreement. And then the two word changes are

both adjectives coming up. It used to say if a plan consistent with the terms of the civil settlement agreement is not confirmed, we added the word materially before consistent, which again makes it better for the Debtors.

And then the next provision, which is the last change, is it used to provide for that right in the event of a dismissal or a conversion, voluntary or otherwise; that's now being changed to in the event of a voluntary dismissal or conversion; that if the Debtors take specific action, as opposed to something surprisingly happening to them, that's what triggers the sort of enhanced right.

All, frankly I think, thoughtful and good changes and we are grateful to the DOJ. We are not unaware, as we'll talk about in another context in a few minutes, of the unthinkable complexity of multiple separate U.S. attorneys' offices and different divisions of main justice and the S.D.N.Y. itself through tele-counsel, all needing to keep huddling and coming back to work on changes to an order that obviously has received attention, you know, rather quite a lot of it, and we're very grateful that they moved, frankly, with the swiftness of the private party.

So, Your Honor, back to sort of the next section, which is the objections. So in the face of what sounds, at least as I've represented it, as a pretty extraordinary incredible deal, why have any limited objections been filed,

even if only a very, very small number of them. And I do want to stress the word limited because even where it's not in the title, there's no question that that's what they are. No one is actually objecting to virtually any of the major elements of the deal, which are undeniably remarkable and in the best interest of the estate.

As the UCC, for example, noted in its statement, the proposed DOJ resolution, with the parenthetical noting assuming that it's consummated essentially, is a monumental step in both these Chapter 11 cases and the broader opioid world. And again, assuming that it doesn't cause other harm in the case, which I'll talk about in a few minutes, quote, "Resolution of the United States claims is a vital step towards the Debtors ultimate restructuring, given that the proposed settlement will... ameliorate the threat of dilution posed by a staggering DOJ claim."

The committee raises in total in its statement which is not an objection, five very possible points that we sort of largely agree with. A couple of them I think we've already hopefully brought home, a couple I'll describe sort of, you know, what we think about them and how we did the best we could.

But while they don't say it, the rest of the objectors, I think it goes without saying that the guilty pleas by the company, the lack of individual releases, the

certainty that this provides, the self-contraction and extremely modest expected economic recovery of the United States of America, and its major focus on the shared goal of state-centered abatement, I have to believe that everyone likes those parts and those are the main parts. It's just that a very few parties out of the 613,000 claimants in this case have just a few things they wish were even better.

But it should be noted, Your Honor, that no party contests the deferential governing and legal standard here, nor do I think that anyone has even challenged that we actually go seven for seven on the Second Circuit's Iridium factors.

In the end, some of the objections spring from a fundamental misunderstanding of the settlement; some express issues just not before the court at all on our motion, which is why they're not, for example, the shareholders should be criminally prosecuted. Other objections raised parochial concerns on which they would simply prefer that the United States not have a view or a preference or a policy. But as far as I know, telling the United States of America that it should not or is not allowed to have a view, an opinion or a preference, especially on an issue where you have one yourself, is not a legally cognizable objection.

Every claimant in this case and every single one of the few objectors to this motion who cuts a deal or

reaches an agreement with the Debtors or with other creditors in this case is allowed to and, in fact, every one of them has made those deals condition on things that they feel they must have. Conditions precedent are as old as law itself and as old as contract and fit both well and literally every single day within the contours of the Bankruptcy Code.

So let me now turn to the substance of the objections and address each topic in turn.

Your Honor, our reply brief is filled quite extensively with legal authority. We cited dozens of cases for everything we say. I'm not going to burden the record by providing pincites and reading case quotes for almost all of them because, you know, I don't think that would actually help anybody.

Objection number one: The $225 million being paid to the DOJ is not itself going to abatement.

Four responses: one, this is not a legal objection. No one has the right to demand that the United States do specific things with the recoveries to which it is entitles or for which it negotiates in a Chapter 11 case.

Two, the DOJ settlement taken as a whole is unquestionably in the best interest of the estate and its creditors. Objectors are not allowed to cherry-pick at provisions they wish were different. The law is crystal

clear and it is black letter that the court must consider the agreement cum onere and may not blue pencil an agreement or tailor it to the deal that objectors or, frankly, the debtors for that matter, wish was just a little bit better.

Three, I had by advised -- not my area of practice obviously, but assume that I'm right -- that the Comprehensive Crime Control Act of 1984, 28 U.S.C. Section 524(c) and other aspects of federal law simply do not allow governmental officials to designate the use of forfeited funds for specified projects or purposes no matter how worthy. Just like the money in the last hearing had to go to certain pathways because that's how the law works -- we're obviously a government of laws, not of people -- the money is required by law when it's a forfeiture to go into the DOJ asset forfeiture fund.

But finally, fourth and most importantly, this objection misses the forest for the trees to a truly remarkable extent. The federal government is taking, quote, "only" closed quote, 225 into the Federal Treasury and its modest recoveries, most likely, on its unsecured claims. It's not taking 2 billion or 4 billion or 5 billion or 6 billion, which it could well have sought. Instead, the very worth of the settlement and almost every one of its fibers evidences that the federal government's prime directive is helping to ensure that the billions of dollars we are

desperately trying to put to work as soon as we can from the opioid crisis, are indeed going to state-centered abatement. With only 225 million, hopefully under 3 percent of the estate going to the Federal Treasury.

Objection number two: The DOJ settlement is an unlawful sub rosa plan because the DOJ has the right to rescind the settlement or withdraw credit it is not obligated to provide if a small number of quite reasonable things important to it are not in a plan of reorganization confirmed by this Court.

First off, Your Honor, let's spend a few minutes talking about consistency, because, of course, as we all learned from childhood, what is good for the goose must be good for the gander.

The objectors themselves have agreed to multiple private side deals in which they have inserted multiple conditions precedent. This is all in the mediator report and, obviously, much more detail behind it. When they those to make the private side deals conditioned on an eventual DOJ deal, I don't think that they were breaking the law and signing an unlawful sub rosa plan of reorganization.

Similarly, when they chose to make their private side agreements conditioned on a shareholder agreement, I don't imagine that they thought or would today represent to you that they believe they were agreeing to an illegal sub

rosa plan. Rather, as we all know, settlements almost all the time, in fact, have conditions precedent.

Unsurprisingly, this and other S.D.N.Y. courts, and courts in every jurisdiction probably in the country, have dozens or hundreds of times approved agreements of this nature, including even more specifically in the Adelphia case, where the Court approved an agreement that, as here, distributed hundreds of millions of dollars to the federal government -- in that case, $715 million, almost three times what is at issue here -- and gave a different treatment depending on the structure of the post-emergent entities.

Another of the very few examples I will provide orally, which is quite a fortiori to the case at bar, is In re. Lion Capital Group, where the Bankruptcy Court specifically held that a settlement agreement that allocated funds generated in a liquidation specifically provided for a certain allowed claim and required parties to vote in favor of the plan containing the terms of the settlement. Even that was not a sub rosa plan because its ultimate affect was to, quote, "free up assets for the estate and permit the formulation of a plan of arrangement," closed quote.

Our deal obviously does not have anywhere near these type of attributes for, one, Your Honor, as probably everyone or almost everyone on the phone knows is wide, deep, consistent and clear. Debtors are absolutely allowed

to reach settlement with counterparties under which counterparties have rescission or termination rights if the eventual plan is not one that they like or expect.

RSAs, PSAs, 9019 settlements, cash collateral orders, DIP orders, and many other categories of agreements approved by branch of courts around the country every single week contain termination rights providing that the eventual plan is not a, quote, "conforming plan," a, quote, "accepting plan," a, quote, "approved plan," parties can undo the agreement.

Creditors are surely limited and certainly to some extent has a right to dictate the settlement terms of the plan, but they absolutely have the right under a wide variety of circumstances to agree to remain bound to a settlement only if they get what they bargained for.

This is so obvious and so ubiquitous in bankruptcy law that I will provide only a small number of examples; our brief has many more.

In front of this Court, there is Empire Generating, 19-23007 from June 2019, where you approved an RSA three months before the plan.

In Global A&T Electronics in 2017 near the end of the year, you approved the agreement that provided its very termination rights to each party, including providing contending no (sound glitch) of a termination right if the

debtors or any equity party, quote, "files, supports, or fails to timely object to any plan of reorganization, liquidation, scheme, sale..." blah, blah, blah "... or other transaction other than the restructuring sets forth herein."

In Ultra Petrol, you know, also in 2017, you approved an RSA. It provided varying termination rights to each party, including yet again, providing the debtor and every single counterparty the right to terminate if the Bankruptcy Courts enters an order denying confirmation of the specifically identified plan of reorganization five months before a plan.

MPN Silicones, you did this in 2014 -- I have docket cites for every one of these -- four months before the plan. TBS Shipping, 2012, one month before the plan. And your brothers and sister on the bench, Your Honor, do it just as frequently; that's an RSA or a PSA or a DIP order or a cash collateral order or a 9019 invariably has and they virtually always pursued plans. In Avia, it was three months before the plan. In Eagle Boat Shipping, it was one and a half months before the plan. In Jenco, it was two months before the plan. Et cetera, et cetera, et cetera, et cetera.

Objection 2(a): The fact that the DOJ forfeiture claim might end up being 2 billion instead of 225 million is somehow inherently illegal. It's also, I guess, kind of

like horrible with a straight jacket, it's a poison pill, it's a sub rosa plan. It's just not, not at all. And in the interest of time, I'm going to limit myself to five answers to this legally and factually unsupportable claim on which no one has a single case.

First, the Debtors could have agreed to a flat $2 billion forfeiture claim with the United States of America in exchange for all that they are getting and all that they are avoiding under this agreement. Would have stood up if that was in the best interest of the estate and very comfortably defended that deal.

Such an agreement would have, of course, been far, far worse for creditors; in fact, at least $1.775 billion worth and probably more than the deal that we actually cut, but it still would have passed muster comfortably under 9019. Since that settlement would have been lawful, this one, which will very, very likely end up almost $2 billion than that one for our other creditors, most assuredly is.

Two, while the word irony is often used erroneously, the irony of the dissenting states alleging that the United States is not entitled to a $2 billion forfeiture claim and that that's improper is almost too much to bear. The 48 states and five territories active in these cases have filed a claim for $2.156 trillion arising out of essentially the same conduct against essentially the same

citizens as the federal government; the difference being the federal government represents 100 percent of the American people and these states represent maybe something percent of that population.

So let it not be lost on anyone that the states filed claims, again, arising out of essentially the same conduct against a smaller, albeit material sets of a populous, are alleged to be 1,000 times the size of the $2 billion forfeiture agreement and nearly 10,000 times the recovery that the DOJ, our super-creditor, that unlike everyone else has asserted credible forfeiture non-dischargeable rights, is likely to receive.

If you just do a quick total and give the estate the benefit of the doubt, the DOJ's claims amount to at least $18.1 billion, including a non-dischargeable criminal fine that they allege is a minimum of $6.2 billion, $2.8 billion in civil damages which they allege should be trebled to 8.4 billion plus penalties, all of which the DOJ asserts is non-dischargeable and has zealously had us extend the deadline to non-dischargeability.

Three, a criminal forfeiture claim filed in the amount of $3.5 billion or more, which in its claims, the DOJ expressly asserts, is based on the relation backed doctrine.

Four, an order of restitution, quote, "In an amount equal to the losses suffered by any victims of the

debtors' offenses," closed quote, the exact amount which would be determined by a sentencing court and could, if we take the states at face value, be in the trillions of dollars; and five, contingent unliquidated claims arising from its fraudulent transfer and civil forfeiture claims.

Answer number three: That neither for the forfeiture claim nor the criminal fine claim of the federal government is, in fact, being allowed today. They're not actually being allowed in advance of confirmation. That is a complete and total answer. The law is completely clear: a settlement can't be a sub rosa plan when claims are not allowed until at or after the confirmation hearing. In this case, 75 days after upon acceptance of the plea agreement and sentencing by a Federal Court in accordance with the plea agreement, and only if the Debtors have chosen to go forward with the plan that conforms to the expectations of the federal government.

There's a lot of law in our reply brief on this where subsequent confirmation of a plan is a condition to consummation of the settlement, that settlement cannot be a sub rosa plan. And we have (indiscernible) including the affirmance of this court in Empire Generating, where the District Court made that exact point in affirming.

Response number four: There rescission right of the federal government under our amended order to unwind the

deal or just not provide the $1.775 billion they are otherwise not obligated to provide does not render the settlement a sub rosa plan. It's kind of ironic because the objectors all love In re. Crowthers McCall, some of them actually cited their leadoff case.

Well, let's see what it says, and I quote, "Where the motion seeks only authority for a company entering into an agreement providing a basis for a plan and to merge with another entity only if certain conditions, including entry of an order of confirmation reflecting the agreement, are satisfied," closed quote. It is a not a sub rosa plan. Read their own case, the lead case at Page 886.

The rescission rights in this settlement and the modification rights, which are kind of a mini version or we're not going to rescind the whole thing, we'd just amend it, are no different than the rights included every day in PSAs, RSAs, cash collateral and other orders.

And we know this best of all because you were just affirmed on this issue, that issue dead on. In Empire Generating, you approved an RSA three months before plan confirmation that exactly as here was conditioned on the plan of reorganization having certain attributes. The objectors, exactly as here, wrongly alleged that that made the agreement a sub rosa plan. They lost before this Court, and on March 23rd, 2020, they lost on appeal. 2020 WL

1330285 at star 2, star 9, pretty much star everything. The whole decision is just down the line exactly an accurate attestment and explanation of the law.

Moreover, Your Honor, as I noted before, before I got to objection 2(a), the DOJ's rescission rights in its agreement are analytically identical to the rescission rights contained in the non-federal public claimant five terms sheets with the private claimants, each of which, as is expressly noted in the September 23rd mediator's report, and I quote, "Conditioned on the Court's confirmation of a plan of reorganization that includes participation by the Sackler family in the plan of reorganization." And three of the deals are, and I quote, "Conditioned on resolution of the United States claims on terms reasonably acceptable to the non-federal public claims."

Here, Your Honor, exactly as the objecting states have in their own term sheets on issues that were important to them, the Debtors and the DOJ each simply have a right to return to the pre-agreement world if the terms in the confirmed plan are not as anticipated.

Sixth and finally on objection 2(a). The agreement to provide cash distributions to federal government for its extraordinary rights and powers does not in any way, shape or form convert the claims settlement into a sub rosa plan. Once again, let's talk about goose and

gander. Every one of the key creditor constituencies at today's hearing is party to other settlements in this case that provide material fixed cash distributions that aggregate to multiples of $225 million to the private side creditors in this case.

And those mediated settlements, which took about six months to get done, were appropriately touted and louted by all of us, every one of us as incredible accomplishments in these cases, not as unlawful sub rosa plans, and the case law is just as clear. See, for example, Adelphia at 27 B.R. 143 at Page 157 and 160, approving the settlement agreement where the government agreed to different financial terms depending on the structure of the post-emergence entity. I won't give you the details. I'm quite confident the Court is familiar with the case.

THE COURT: Can I go back to the earlier point you made, that the $2 billion front claim, forfeiture claim, is subject to a plan being confirmed?

MR. HUSNICK: Yes, Your Honor.

THE COURT: Page 8 of the criminal settlement says that the forfeiture judgment, which is the $2 billion, shall be deemed to have the status of an allowed super-priority administrative expense claim in the Purdue bankruptcy with priority over any and all claims and administrative expenses.

So when you say it's not effective until the plan is confirmed, any plan to be confirmed would have to have that in it, right?

MR. HUSNICK: Again, Your Honor, their rescission right -- let me first pause for a second. That is exactly the ambiguity that, frankly, others point out as well; that in one place, it seemed to say shall have, whereas in many, many other places, it was clear that it was only upon the acceptance of a plea agreement at the sentencing hearing.

THE COURT: Right.

MR. HUSNICK: Which is why I took some time to read through the changes to the order. Apparently, the majority of them actually just obliterate any ambiguity about this point. For example, Paragraph 5 of the proposed order now says if the District Court accepts the plea agreement at the sentencing hearing, which is the thing that happens after confirmation, the United States shall, as of the latter of the entry of the judgment of conviction and, two, the confirmation of the Debtor's plan.

THE COURT: All right.

MR. HUSNICK: And then Paragraph 9 contains a mega-override so that there's no possible question at all, that says notwithstanding anything else in this order or the plea agreement to the contrary -- that gives you the override that you're looking for -- a forfeiture judgment,

forfeiture payment and criminal fine shall not be allowed claims until the latter of, one, entry of judgment which succeeds confirmation and, two, confirmation of the Debtors' plan.

THE COURT: Okay.

MR. HUSNICK: So it's, like, kryptonite wrapped in titanium now and there's no possible question left.

THE COURT: Okay. Anyway, I interrupted you. You can go on.

MR. HUSNICK: No, no, that's exactly what people called and were, like, and the UCC to their credit actually put in their pleading, like, we're a little confused but we sure hope it's the second way and not the first way. And since it was definitely the second way, we just said it five times in the order so that nobody had to think about the issue every again.

Objection number five, which is not really an objection as the UCC in its statement candidly admits, it's a concern and it's a legitimate concern. It arises out of the fact that the settlements reached between the non-federal governmental claimants and the private side claimants in mediation have a condition in them that the non-federal government be satisfied, reasonably satisfied actually -- excuse me, that word is very important -- with the terms of the DOJ deal.

So what happens if a subset, for example, of the non-federal claimants allege that this unbelievably pro-estate gives them kind of almost all the money, triggers their reasonable satisfaction termination right. First of all, I'm not sure what happens if only some of them or a few of them say it because the documents are briefed, leave it at that.

That said, Your Honor, I have a lot to say about this risk because it is a risk that needs to be discussed and addressed head on. I'm going to tell you exactly how the Debtors think about it. First of all, these reasonable termination right provisions look an awful lot like the ones that the Debtors and the AHC negotiated 13 months ago in the October 8th, 2019 framework term sheet, which provides, and I quote, "As condition to the settlement, Purdue, the shareholder parties and their respective relates parties shall have resolved with the U.S. Department of Justice on terms satisfactory to them... all potential federal liability arising from or related to opioid-related activities." That's Paragraph 10.

So I'm going to put forth and I stand by the following view. These reasonable termination provisions, or reasonable as the word of the provisions -- I'm not opining on the reasonableness of the provision -- were designed to give the states and the NSG an out if the federal government

took intolerably much value for itself or took other action and so grievously diminished the value of the estate that the states could not longer stomach the private side deals that they come after six months of mediation.

From the Debtor's perspective, this is a question of choosing among and managing risks, which is exactly what Rule 9019 and Section 363 and Iridium and TNT Trailer not only allow but require the Debtor to do. And respectfully, the choice that the Debtors made on this issue is at the apogee of reasonableness and nowhere near its nadir which is the requirement under law.

On the one hand, the risk we face is not reaching a deal with the federal government and likely being indicted, prosecuted, likely in more than one jurisdiction by multiple U.S. Attorney's offices. This scenario comes with no ability to manage the risk that the new entity would be excluded from federal programs, which destroys the business, or that in the meantime while litigating, Purdue Pharma could lose its state and federal licenses and quotas, which also essentially puts new debtors out of business.

And then even if we were still around after multiple federal litigation, turning to then address more than $18 billion in federal claims or the subset of them that was civil or that survived a criminal prosecution or the like, all allegedly both non-dischargeable and giving

rise to forfeiture as alleged by the federal government. As we see it, Your Honor, under this scenario, distributions would likely approach or be zero for every single creditor in this case, even if Purdue ultimately prevailed. And ironically, I don't think there's a single objector or anyone in this case on the creditor's side that hopes Purdue prevails, because obviously the conduct is the same conduct underlying the claims of every other party in this case.

The alternative risk that we had to choose in choosing which of the risks was in the best interest of the estate to mitigate as best it could, is that this wise and fair and generous to the states most of all deal is seen as so inseparable to some of the states that they attempt -- and I stress the word attempt -- to press the nuclear button, argue that it is not reasonably acceptable to them and send all of us, themselves most of all, to the ground zero of no deals on allocation, a ground zero that will set this case back a year, hundreds of millions of dollars in professional fees, and that amount or much, much more in lost value.

Because what exactly would cancelling the private side deal mean for the states? Not that I'm remotely conceiving that the Debtors and the private side and many others would passively sit by and allow such an outcome to reap. As this Court, I and many others have repeatedly

noted and warned, in the absence of the private side allocation settlements, we could literally spend the next 20 years and every single penny this estate would ever have or get its hands on in professional fees resolving the claims in this case.

There are currently 613,000 claims on our docket, totaling approximately $140 trillion. So the record is clear, the number is trillion, not billion. But the aggregate asserted number is actually much, much higher than just $140 trillion because 90 percent of the claims were filed in an unliquidated amount without numbers. The 140 trillion comes from only about 10 percent of the filed claims. Plus, if we really had to decide who gest what on a claimant-by-claimant basis without the private side deals, there could be $500 trillion of claims or maybe even a quadrillion dollars of claims across more than 600,000 individual claimants, each seeking material sums with all in the millions, billions or trillions. These numbers are, in fact, unfathomable.

The states, and this is why and probably everybody might well be looking at net zero recovery if we went back to square one even without the DOJ recovering. But I have faith that we won't, Your Honor, which is why we chose the way, way smaller of the two risks, in part, because only the dissident states and not the ad hoc or the NSG are objecting

today. But much more importantly and because I will not let go of my faith that all of our goals are actually the same, to get the most value to a state-centered abatement model to save lives as soon as we reasonably can, and also because the $225 million going to the DOJ exactly basically, Your Honor, just ruled half an hour ago on the prior motion, is actually mathematically just a fraction of the material dollars already allocated to the private side and a tiny and unbelievably reasonable fraction of the billions of dollars expected to be distributed on account of the state and local government for abatement.

Let me use hypothetical numbers just for a minute. Even if its whole distributable value in this case is only $7 billion, let's do that case -- cash, insurance, assets, revenues, Sackler payments -- I'm assuming for this purpose a flat $3 billion contribution and no more because it only gets better -- the DOJ's $225 million represents about 3 percent of that total, leaving 97 percent of the estate to the other creditors, mostly to non-federal governments.

I've been doing this for a pretty long time, Your Honor, and I have genuinely never seen anything like it. A creditor that credibly alleges that it has $20 billion or more in super-priority forfeiture non-dischargeable fines and claims and unthinkable rights to do things to the company if it thought it was in the government's best

interesting, agreeing to take less than 2 cents on the dollar and leave 97 percent of the estate for general unsecured creditors.

And again, regressing out the DOJ and focusing just on the private side claimants for a minute. We had to choose a risk, Your Honor, and we just don't believe that the states, in fact, are sanguine -- the Debtors most assuredly are not -- that they would end up with anything remotely close to the same quite large percentage of the radically tragically smaller pie that would remain if and when a long brutal ugly war reignited between the private and governmental claimants someday drew to a conclusion.

The private claimants have made it very, very clear to the Debtors that they are prepared for war against the governmental claimants if their hard-fought settlements are not consummated.

So, Your Honor, the Debtors chose between these two risks, weighing both their probability and their amplitude and stand by the choice they made, a choice that as a matter of law is entitled to substantial deference. Candidly, it wasn't a very hard choice.

And then there's sort of objection number six, which brings me near the end of my presentation. It's not really an objection at all; it's kind of like the one you just finished overruling, which is a request that the

judgment of a very small number of objectors actually override the judgment of the Debtors at the importance of proceeding today, as opposed to at some future date.

This last -- it's really not an objection -- I guess, request, which of course has no legal support because it can't, is a request that the Court adjourn today's hearing because, as they would have you believe, there really is no risk or cost in doing so. And if we only had a few more weeks, other open issues might fall into place and make the deal today resolution utterly unobjectionable and delightful to these very few objectors.

At very first blush, Your Honor, this siren song has a bit of a lure. Who wouldn't want to adjourn a contested matter if it could be heard a few weeks later and maybe be way less contested or uncontested? But as this Court well knows, that is what the Debtors have done at every single possible opportunity in this case and in other cases that we have had before you for decades. We adjourn matters once, twice, even three times wherever we possibly can to narrow and frequently fully resolve issues that originally drew discomfort or unhappiness from stakeholders.

Your Honor, if this were such a case and adjourning this hearing were not terrifyingly risky and imprudent, you know we would be the first to suggest it, as we have done at so many junctures in this case and prior

cases. Here, Your Honor, the siren song of just adjourn is exactly, literally and technically, a siren's song because the request understates and completely misapprehends the serious unjustified and unjustifiable risks that the Debtors in these estates would be taking if the 9019 agreement is not approved today, and the amplitude is in the billions.

The whole case and all that some of us have been working towards for almost three years could be the price tag. Just like how we settle, when a debtor settles is a business judgment question and one that, as a matter of law, it can have substantial deference under the Bankruptcy Code and Bankruptcy Rules.

We have very good reason to be absolutely unwilling to take the risk of this hearing being adjourned, and that judgment deserves both respect and deference. It is not surprising that no one has brought forth, or I think could bring forth, a single case citation to this Court where a court has ruled that a debtor must, as a matter of law, adjourn a mission critical case saving settlement because a small group of creditors in their subjective judgment and for their own strategic reason would rather have it heard anon. And as Judge Gerber actually said eerily on point in Adelphia, and I quote, "I am not in a position to condemn the Adelphia board or this settlement based on what is in essence speculation as to what the DOJ

would have done. That is what settlements are all about," closed quote, Page 19.

It also bears mentioning, Your Honor, that many stakeholders in this case seem to share the Debtor's view about the wisdom, propriety, and legality of resolution. There are five primary private side groups, as this Court well knows. Of the five, one chose to object, and it was a serious objection, a long objection; it is resolved. Now, none of the private side groups are objecting.

There's the United States of America. I don't really need to belabor that one. Obviously, they are not objecting; they are the counterparty.

No objections from the tribes, no objections from the AHC, no objection from the NSG. The UCC, which is very careful with its words, chose not to object, but instead to file a statement raising a handful of thoughtful and understandable concerns that we share, goals that we either achieved or tried to achieve or on issues that we have now clarified and should be put in the resolved class.

The statement reflects the unavoidable fact that we all live with every day in our personal lives and professional lives: we can't get everything we want. It would have been great if this unbelievably terrific deal were even better, but that comes nowhere close to making it not good enough under Rule 9019.

Your Honor, procedurally, the filing of the professors, I think is not yet sort of before the Court. It is so replete with error and so permeated by misunderstanding of these cases, with the Court's permission, I actually won't address at all right now. And if it is necessary, I am delighted to argue later because I just think while they're brilliant and wonderful, amazing professors and I read a lot of their work and I love a lot of their work, they just get this one very wrong.

So let me instead hit one final topic and then I am done with my opening.

Your Honor, I've already -- and then I'll reply in extraordinary detail, thoroughly address that the, quote, "PBC" issue certainly does not give rise to a legally supportable objection. The simplest answer is that settlements, just like every settlement of every one of the objectors in this case is allowed to be conditional and is allowed to have a change in terms or a rescission right if the deal that people are basing their settlement on doesn't happen at the confirmation hearing.

But because it looms large in several of the objections, and maybe more importantly because so many parties pretty much who are not actually involved in this case either misunderstand or mischaracterize the provision in the DOJ settlement that is premised on this Court

approving a plan under which Purdue will not emerge from Chapter 11, but its assets will instead be transferred on emergence to a public benefit company or entity with a similar mission, and others seem to even suggest or demand that the assets be sold now no matter how devastating the value loss, a few words need to be said, but only a very few words.

First of all, if today's release is granted, Purdue will, hopefully before Thanksgiving, be pleading guilty to multiple serious felonies on the federal level. And if the plea agreement is accepted and Purdue is convicted, Purdue Pharma will never emerge from Chapter 11, ever. This is a goal that I believe is shared by all of our creditors, maybe most of all by the objectors.

That, of course, though gives rise to a question that has to be answered. What do we do with the Debtor's material and complicated assets in the near term to best achieve the many goals of these cases, maximize abatement value, and save and improve as many lives as we possibly can?

I can assure you, Your Honor, that the Debtors, like other people, have very strong views on the topic. If I'm left with no choice but to get through an extended discussion of the merits of the PBC this morning, I am prepared to do so in extraordinary detail with numerical

examples of exactly why we're doing what we're doing. If other creditors want to talk to you about whether an immediate sale should happen, I have plenty to say about that as well.

But today is not actually the time or place for it. It is a 9019 hearing about an almost unprecedentedly favorable settlement, not a referendum or an open mic session on the future of Purdue; rather, we will continue to have these conversations where they belong in the context of mediation.

The DOJ condition precedent provides only that all aspects of the deal, including transfer to the states by the federal government of almost $2 billion, will remain in place, and I quote, "Public benefit company or other similar entity." There is much flexibility in the offing.

My last three minutes, Your Honor, I will just dispel some of the most -- the largest misunderstandings. A public benefit company is nothing more than a regular private company created under state law, with one tweak: it's one whose governing documents provide that it is allowed to take social good and the betterment of society into account alongside its profit motives. The structure has stayed available under the laws of 36 states and territories so that officers and directors can't be sued if they do societal good or for profit in order to do things to

make our world a better place by donating profits to opioid abatement.

For the avoidance of doubt, a PBC is not -- I repeat not -- a government or quasi-governmental corporation. Newco would not in any way, shape or form on any level and not even for a pico-second, be free from state or federal regulations, laws or prosecution. The exact corporate and trust structure of Newco and the distribution vehicle, the identity of trustees, directors and management, the terms of the government documents and dozens of other issues are ripe and are undergoing towards their resolution and compromise. No creditor will have to take any role, function, post, ownership, security that they don't want to.

Your Honor, a few months ago, I had hoped that this November hearing would be the hearing in which we were presenting three term sheets on all the remaining case issues. While it is not a shortcut, I do remain hopeful, maybe foolishly so, that we might be able to do that when we are before you in December or very soon thereafter.

But for today, we are poised to take a monumental gargantuan leap forward in these cases for accountability, for transparency, for abatement, for value maximization, and for the value going to the American people via the non-federal governmental claimants who at last stand poised to receive the very material majority of these estate assets,

which they have already pledged to dedicate 100 percent to the opioid crisis, exactly as I told you was our goal at the first day hearing 427 days ago and with which you and many others, including these same objectors, have agreed again and again.

I respectfully suggest that the Debtors have far, far more than satisfied their burden of demonstrating that the settlement, both for what it accomplishes and what it sends is in the best interest of these estates.

THE COURT: Okay.

MR. HUSNICK: Your Honor, with respect to order of operations, if it makes sense since I'm pretty confident the DOJ is in full support of the motion, and I know that the Court always wants to hear from supporters first and then, you know, the order may get complicated after that, you know, given that, you know, there's an objector. If it makes sense, we thought it might make sense for the DOJ to go next. But obviously, again, as the old saying, I'm just a guy and you're the Court, so whatever, of course, is the Court's preference.

THE COURT: No, that's fine. I'm happy to hear from Mr. Fogelman, although he's already confirmed that the order as proposed is acceptable, even though it modifies arguably the terms of the agreement. I have a logistical issue too. This hearing's gone longer than I anticipated,

and there's a technical issue with CourtSolutions that we have to reset if it's on for more than four hours. So at some point in the next 10 minutes or so, we're going to have to do something to that end, but I could hear from Mr. Fogelman in the meantime.

MR. FOGELMAN: Thank you, Your Honor. This is Larry Fogelman on behalf of the United States. Can Your Honor hear me clearly?

THE COURT: Yeah, I can hear you fine.

MR. FOGELMAN: Great. May it please the Court, in the face of the national public health emergency stemming from opioids, the United States has deployed extensive resources to combat this crisis, which claims tens of thousands of Americans lives each year. The broad efforts of the United States include the use of criminal and civil tools under federal law to hold actors accountable for their unlawful actions, including manufacturers, distributors, pharmacies, and physicians.

We are here today because the United States has reached a milestone event in its nationwide effort to address the opioid epidemic, the global resolution of our criminal and civil law enforcement investigations into Purdue, arguably the most significant manufacturer of opioids in the country. Given the unique task of the United States to enforce federal law and to ensure public health,

the resolution has twin aims: to hold wrongdoers accountable and to facilitate resources for treatment and care of those affected by opioid use disorder.

The government's criminal and civil resolutions with Purdue hold Purdue accountable for its conduct and are structured to ensure that remedial actions are taken towards combatting the opioid crisis on a nationwide basis. Debtors' 9019 motion should be approved as it is not only in the best interest of the estate, it is in the best interest of the public in fighting this national health emergency.

First, the global resolution holds Purdue accountable to the public for its misconduct. Most significantly, the global resolution requires Purdue Pharma, L.P. to plead guilty to three felony counts for defrauding the United States and violating the anti-kickback statute from 2009 to 2017.

The resolution also requires Purdue to admit publicly to the facts underlying its criminal misconduct, and it brings to light the government's factual conclusions from its civil investigation. Further, the United States requires that Purdue will host a document repository available to the public relating to the criminal charges and civil violations.

Second, the global resolution is a critical step in remediating this nationwide crisis. Of the government's

$2 billion criminal forfeiture claim, $1.775 billion will be credited to the states, local governments and tribal authorities for their critical work in abating this epidemic. The government's $3.544 billion criminal fine and $2.8 billion civil damages will be treated as general unsecured claims.

Your Honor, we have a cleareyed view that in a case with trillions of dollars of claims and a company with assets worth a tiny fraction of the dollar value of those claims, the recovery on unsecured claims might well be less than one cent on the dollar. Essentially then, we are applying the vast bulk of the government's recovery as a credit to the abatement plan.

The UCC has commented on the, quote, "favorable financial terms of the proposed DOJ resolution," unquote, which in its view, quote, "will result in significant value being available to distribute to the Debtors other creditors and abate the opioid crisis," unquote. The UCC further observes that, quote, "resolution of the United States claim is a vital step toward the Debtors' ultimate restructuring given the proposed settlement... ameliorates the threat of dilution posed by a staggering DOJ claim," unquote.

In reaching this resolution, the United States felt it was incredibly important that the credits of the estate, which include the states, thousands of local

governments, trial authorities, and victims of opioid use disorder, receive the vast majority of the United States' potential recoveries in this case to permit those entities to put those funds towards the important and critical work of abatement of this crisis.

This global resolution achieves that goal as 88.75 percent or 1.775 of the $2 billion of funds in our criminal asset forfeiture deal goes towards abatement.

Based on our criminal investigation, the U.S. would be within its rights to assert at least a $3.5 billion forfeiture claim, as reflected in our proof of claim, and at least a $6.2 billion penalty. But instead of aggressively pressing these claims through a prosecution, the government believes that these funds would be better used if put towards the abatement objectives of federal, state and tribal governments that they had achieved in the mediation.

MR. HUSNICK: Mr. Fogelman, can you take a breath for just one second. Your Honor, I'm getting messages that the dial-in line for people who are --

THE COURT: Yeah, this is what I was addressing earlier. I apologize for this. You're all going to have to hang up and redial in again. CourtSolutions can only go for four hours at a time and then, I guess, it poops out, so this is probably a good time for people to stretch their legs too. Why don't you redial in so that you're redialed

in by 2:00 p.m. Okay?

MR. HUSNICK: Thank you, Your Honor.

THE COURT: All right, I'm going to hang up at this point. Mr. Fogelman, you can pick up at that point.

MR. FOGELMAN: Thank you, Your Honor.

(Recess)

THE COURT: Hello, everyone. This is Judge Drain. Were back on the record in in re Purdue Pharma, L.P. I apologize for having to take the break. Technology is like certain people. They can't take more than four hours of court time in one stretch. So, again, I just want to remind you all to keep your phones on mute unless you're speaking, and I think we broke when Mr. Fogelman was still speaking on behalf of the U.S. and the DOJ. So, Mr. Fogelman, if you're back on the line, you can keep going.

MR. FOGELMAN: Thank you, Your Honor. For the record, this is Larry Fogelman on behalf of the United States. Just prior to the break, I'd been making the point that, instead of aggressively pressing our criminal prosecution, the government believes that the funds at issue would be better used by putting them towards the abatement plan at state and local governments and tribal authorities. And I want to make two points about how this credit fits into DOJ's previously stated policy interests.

First, it's worth understanding our resolution in

the context of DOJ's written anti piling on policy about coordinating corporate resolutions in parallel proceedings arising from the same misconduct. Under that policy, which we published in 2018, we endeavor, as appropriate, to coordinate with and consider the amounts paid to state and local authorities that are seeking to resolve a case with a company for the same misconduct. The goal of the policy is achieving an equitable result.

That policy applies across DOJ's enforcement actions, including this one, where many state and local authorities have proceedings against the Debtor arising from its opioid marketing and distribution practices. That's why here, in this case, and through this settlement, we are prepared to see the vast bulk or our asset forfeiture recovery go towards this critically important abatement plan advanced by the states, local governments, and tribal authorities.

Second, and more specific to the opioid context, this resolution is very much consistent with DOJ's filings more than two years ago in the multi-district federal litigation over opioids. For example, in April 2018, when we filed a motion to participate in settlement discussions, and as a friend of the court, we explain that the United States has a significant stake in combatting the opioid epidemic, which has implications for the proper allocation

of any monetary settlements of claims. It's that same stake in combatting the opioid epidemic that we are endeavoring to address through this settlement.

We recognize that the goal of nearly every interested party in this case, including the court, is for nearly all the proceeds of the bankruptcy to go to opioid abatement programs, and the United States is a strong advocate and partner in achieving that goal. Indeed, we made the decision to permit a credit against our forfeiture claim because of our beliefs in the extraordinary value those funds will have if they are used towards abatement. Similarly, with those interests in mind, we wanted to ensure that the future company's mission benefits the American people. Thus, it was incredibly important to the United States that the future company would be a public benefit company, or a structure with a similar mission.

We say this against the backdrop of the United States' recognition that Oxycontin has benefits when used appropriately. This PBC structure can ensure that Oxycontin is distributed in a manner as safe as possible without diversion. Equally important, the PBC structure will enable the future company to have the fiduciary flexibility to use the proceeds in a manner that go towards further abating the opioid crisis and taking into account long-term public health interests. Critically, we wanted to ensure that the

new company is not required to maximize profits over lives; that the new company has a robust charter and mission; and that the proceeds will be used for the benefits of those individuals and communities suffering from the opioid crisis.

Again, while the aforementioned mission is critical to the United States, given our unique role in addressing this crisis, we wanted to ensure that Purdue's other important governmental constituencies, the states, local governments, and tribal authorities, have the necessary flexibility to achieve the goal that we all share. That's why we use the term "PBC or entity with a similar mission" in our settlement papers. We look forward to working cooperatively with the Debtor and other creditor groups to come up with the most effective structure for post-emergent Purdue.

With regard to timing, Your Honor, we did include in our papers the requirement that the 9019 motion be brought within 7 days. And it's also a requirement of our papers that, within 7 days after the court approves the 9019, the parties will seek to have the plea heard in District Court in New Jersey. Thus, built into this agreement was our desire to get this deal to the finish line. We want Purdue to allocate to the three felonies that are the subject of the plea agreement, and we want that to

happen as soon as possible. We would be prejudiced if this doesn't go forward. The U.S. would have lost months of time that could have been used prosecuting and liquidating its claims. We shouldn't be penalized for opting to potentially negotiate our claims and submit them to the court.

In sum, Your Honor, the United States' role on this case is far greater than its role as a creditor of the bankruptcy entity. Rather, we are tasked with serving the broader public health interest, and we take that role incredibly seriously. As part of that broader role, we wanted to ensure that our resolution with the company achieved the goals of the United States, while affording every interested party in this case the ability to work towards solving this crisis. We believe our deal does that. Our deal is both in the best interest of the Estate as well as the best interest of the public, and we ask that the court approve this 9019 motion. Thank you, Your Honor.

THE COURT: Okay, thank you. I guess I will take Mr. Huebner up. If anyone else wants to speak in favor of the settlement, they can. Of course, I know who has objected. I'm assuming that those who have not objected are prepared to let the settlement be approved, but if anyone wants to speak, briefly, in support of the settlement, they should feel free to.

MR. ECKSTEIN: Your Honor, this is Kenneth

Eckstein of Kramer Levin. Would it be appropriate for me to make some brief comments at this point?

THE COURT: Sure.

MR. ECKSTEIN: Thank you very much, Your Honor. I hope you can hear me through the phone.

This is Kenneth Eckstein of Kramer Levin speaking on behalf of the Ad Hoc Committee of Governmental Claimants. Your Honor, I'm speaking briefly to advise the court that the Ad Hoc Committee supports approval of the DOJ settlement today. We share in the view that the DOJ settlement represents an essential building block to a plan of reorganization in this case, and was an important step recognized by the consenting states and the Debtor in connection with the negotiation of the term sheet at the outset of this case.

As Your Honor has heard in great detail, as structured, the settlement contemplates a $225 billion-dollar payment ultimately being provided to the DOJ in an allowed claim of $3.544 million dollars. This, if implemented, represents a remarkable step, which should pave the way for the overwhelming portion of this Estate, including proceeds of a Sackler settlement being dedicated to fund abatement of state and local governments and to fund the settlements with the private claimant groups, most of which also have agreed to dedicate their recoveries to

abatement.

We share the view that this settlement is not a sub rosa plan and we take great comfort from the remarks made both by Mr. Huebner and by Mr. Fogelman in describing exactly how they expect to implement the condition that was built into the settlement regarding a "public benefit corporation or other entity with a similar mission" being embodied in a plan of reorganization. And in particular, the flexibility that Mr. Fogelman pointed to and the desire to continue to work closely and cooperatively with all of the parties in this case to put into place a workable form of governance and a workable emergent structure is something that is very important to us, and we have every reason to expect that that is going to be successful. Having this settlement in place provides us greater confidence that we're going to be able to achieve that very important goal.

Your Honor, while we appreciate the concerns raised by the Creditors' Committee, as well as some of the concerns that have been raised by the non-consenting state group, we ultimately share the view that, given the challenges that we all face in this case - and they are many - that it is most constructive to start putting fundamental components in place that are going to allow us to get to a plan. We believe this is one of those components, and therefore, the Ad Hoc Committee is supportive of the Court

entering an order approving the DOJ settlement. I'm happy to respond to any questions. Thank you, Your Honor.

THE COURT: Okay, thank you. All right, I don't know what order the objectors have agreed on, if any, but I'm happy to hear from them, at this point.

MR. SHORE: Your Honor, this is Chris Shore from White & Case. We're kind of caught in the middle, now. We're neither supportive (indiscernible) --

THE COURT: That's true. I should hear from you, you're right. I should hear from you first.

MR. SHORE: Okay. Well, thank you very much, Your Honor. Chris Shore from White & Case on behalf of the Ad Hoc Group of Personal Injury Victims, which represent about 60,000 of the about 130,000 personal injury claims filed. And the Ad Hoc group has been a mediation participant.

I'd like to address, first, a little bit about the objection, then go to the resolution of the objection that we've reached, provide a little more color than Mr. Huebner did on that, and then maybe a little bit at the end, focus on this point about where we go from here.

First, with respect to the objection, we were really -- you know, when we got the Debtor's motion, which was a surprise, I think to all the creditors as to what it was, and how it was going to play out. We had two concerns: one was a global concern, and one was a parochial concern.

The global concern focused on the fact that, as Your Honor knows, for months, a number of creditors, at great expense and spending a lot of time, worked in a mediation to address allocation of a state distributable value.

And the reason we focused on allocation, because allowance was such a flashpoint. It kind of didn't matter the size of your claims or the priority of the claims, as long as we just agreed to how the distributable value would be allocated. And ultimately, we all agreed, as reported by the mediators, on allocation percentages and/or amounts. But all of it is premised on there being global peace embodied in a plan. None of these settlements can be effectuated outside the context of the plan.

And to that end, we are taking comfort from Mr. Huebner's comments that the Debtors are committed to honoring those settlements when they ultimately get around to a plan process. But while that was playing out, the Debtors were focused on allowance, and allowing claims, even if parties like the Ad Hoc groups objected to the amounts of the claims. And not only that, the Debtors weighed in on priority, agreeing to a $2+ billion-dollar superpriority claim. Now, I don't know whether it's ambiguous or we were just misreading it wrong, but the proposed order that went with the original motion, I thought, was pretty clear about what the Debtors were giving up and when they were giving it

up, in the context of the plan.

And the reason the superpriority admin claim matters so much is, of course, there are no secured pre- or post-petition claims, so the allowance of that claim would, in effect, be an allocation of distributable value in the case. It's -- that's just the way it would work. We'd all be saddled, whether in a plan process, or something else, with dealing with the payment of that claim and the raising of cash to pay that claim, in the context of a plan.

So, as to this global piece, we felt that there was something unfair about the Debtors having sent the creditors out to mediate over allocation and leave aside issues of allowance and priority, while at the same time, one creditor was getting a giant guaranteed recovery. Now, it is an (indiscernible) important stakeholder, but it is only one stakeholder. And we formed a view, as a group, the global piece would best occur if it all occurred at the same time.

Now, for the parochial point, I'm trying not to be provocative, here, and we've discussed this with the DOJ, but it's not hard to imagine that the individuals most affected by Purdue's role in the opioid epidemic, the people who develop medical conditions and, in some heartbreaking cases, their heirs, have very strong views about whether the Federal Government played a role in the process, whether it

did its job properly, and whether it protected citizens from known harms. It's also not hard to imagine that the same individuals would not agree, outside some form of global peace, that the Federal Government would not only get a claim, but that claim would include what might be subordinatable penalties and fines. So, whether viewed from the perspective of all creditors or just the individuals, we had very strong views about the possibility that any of this could be done outside a plan.

To that end, we, as Mr. Huebner laid out, we have engaged with the Debtors over the past week, and directly with the DOJ, and whether it's titanium and Kryptonite or not, we've restructured the order to embody, really, four concepts.

First, with respect to the superpriority claim, as Mr. Huebner pointed out, it only arises in a ladder of an acceptance of the plea, or the confirmation of a plan. So, there is no partial peace, here. It's going to be global peace before that superpriority or, as global as we can get, the superpriority claim takes effect. And importantly, the provision with respect to that overrides everything. It is a notwithstanding anything in the plea agreement, or the order to the contrary, that it can't -- it can't rise to the status of an allowed claim. And one clarification, there, because I've mentioned to the Debtors' plan: as we

understand it, it's not a plan that is proposed by the Debtor, such that they have some hold on exclusivity, here, but rather, it is a plan which deals with each of the Debtors.

The second point, same with the criminal fine. The criminal fine is going to be treated like the superpriority claim. It -- the provision which deals with it is notwithstanding anything else to the contrary. It only arises, or rises to the level of an allowed non-subordinatable claim if we get to a confirmed plan. The civil claim is dealt with a little differently. The civil claim -- the Court is, at this point, allowing a $2.8 billion-dollar general, unsecured claim outside the plan. That is what I would consider a garden variety 9019 settlement. And because, as Mr. Huebner pointed out, the size of the creditor pool, $2.8 billion-dollar allowance isn't going to tie the hands of us, in the context of a plan, particularly when the Government even acknowledges that that might result in a distribution to their claim classified separately in the pennies of dollars.

Finally, we've clarified with respect to the lift stay. The lift stay originally would have provided, whether it was ambiguous or not, would have provided the Government the right, if it had obtained a judgment from another court, to execute on that, and we've clarified that the only thing

that can happen without the government -- Federal Government coming back to the Court, is a liquidation of the claim and the continuation of the investigation. So, with those modifications, and subject to what I just clarified there, the Ad Hoc Group is not objecting to the 9019, at this point.

But I do want to make clear that we have some firm views about where we need to go. To date, there has been lots of talk about the plan process, and discussion of lots of money for abatement and distributions to victims. But to date, there is no draft plan, there's no term sheet, there's no timeline, there's no commitment, and we're just stuck in a world in which the admin burn continues. Money that could go to compensation and abatement isn't being spent on compensation and abatement, and we had hoped that this milestone would create an opportunity to structure a plan, to get something out there so that the parties could come forward. We have a deal with the DOJ now, we have the mediated allocation settlements, all pieces are in place.

So, the issue is, do you either take the opportunity, as I think the UCC is proposing, that we not approve the settlement at this time, and deal with some -- one piece, which I'm going to get to, which is the reasonably acceptable issue; or do we let this go with the understanding and continued commitment by the Debtors that

they're going to drive this process forward and that we're going to be able to hold the deal together? This is kind of where we came out on it: as has been noted in the papers and already some discussion in court today, there is an out, as noted in the mediator's report for the public side to walk away from allocation deals if the plan -- or if the resolution with the DOJ is not reasonably acceptable.

And now, to boil down to its basic economics, the only thing that's happening here is $225 million dollars will go out the door to the government. That's immaterial, in the context of total distributable value. There's going to be a $2.8 billion-dollar allowed general unsecured claim, which, again, in the context of this claim pool, is immaterial, and I believe, if pressed, Mr. Troop would have to concede that those are acceptable. It comes down to this public benefit company concept, and the option - it's a very specific option that's given to the Government to void the entire deal if a certain exit structure is not used.

Now, my, kind of, view on this is that when we're dealing with, for plan purposes, the Court and the creditors, including the Federal Government, are going to be focusing on distributable value - maximizing distributable value - whether that's through a sale, as it seems like some of the Non-Consenting States want, or through stock in a reorganized entity, it's all going to abatement. And it's -

- everybody should be interested in dealing with, or increasing, the amount of money that's available for distribution.

So, our view is, if it's a sale, and it's determined, as it should be in the context of a plan, that a sale actually maximizes the value of monies to distribute to abatement victims, over some other form, I can't believe the Federal Government is going to blow up the plan in favor of a structure that provides less abatement money. On the flipside, if it's a reorganization, and it's determined that putting it in this structure, the public benefit company, maximizes value, I can't believe that the Non-Consenting States are going to blow up the settlement and return us all to the status quo, if a plan is confirmed with that kind of structure.

So, our view is, rather than hold up the settlement at this point while that issue is resolved - and I do think it can get resolved - I think that the -- whether the Court indicates or the parties just take it upon themselves, we need to get into a virtual room, we need to start drafting the plan, we need to start understanding those issues. And obviously, the form of structure coming out is going to be important, and Mr. Huebner can convince everybody that his view maximizes value and other people will have views. But it's the exchange of those views that

makes a plan process work, and we just waited too long to get there.

So, we've come to the conclusion that the scenario in which we're all thrown back into chaos because either the public Non-Consenting States blow up a deal over one structure or another, or the Federal Government wants to blow up a deal over one structure or another, can probably be mitigated in the near term, but again, would implore everybody to focus on the fact that this case isn't getting better with age - no case does - and that money needs to get out both for abatement and compensation, rather than the lack of momentum that exists at this time. So, unless Your Honor has any questions, I've got nothing further.

THE COURT: Okay, thank you.

MR. TROOP: Your Honor, this is Andrew Troop from Pillsbury on behalf of the Non-Consenting States. Unless someone would like to go before me, I'm happy to go now.

THE COURT: Why don't you go ahead?

MR. TROOP: Thank you, Your Honor. Your Honor, to put this just. little bit in context, many months before, and I would venture, even longer than that, Purdue set itself on a course to emerge from its troubles as a public benefit company dedicated to providing opioids in a responsible way, and other public benefits. I think, from pretty close to about that same time, the Debtors got a

reaction from at least -- from the states representing about 53 percent of the country, that that structure was not acceptable - the public benefit structure. And the Debtors have not wavered from their position that that is the structure that they are advocating.

And we move forward now to a settlement agreement with the Department of Justice that is focused on achieving that exact result. Everyone, everyone, has talked about how good the settlement is, how it satisfies the Iridium factors, how it's in the best interest of creditors, the economics of it. But they've ignored, frankly, the prescription of the Supreme Court in Jevic, and frankly, adopted by Judge Garrity in the LATAM case, that that's not the test to be applied now. Here, the question is whether the settlement intends, is structured, to drive people to a result that, it effectively impacts their franchise --

THE COURT: Can I interrupt you on that?

MR. TROOP: -- in the Chapter 11 case --

THE COURT: The Second Circuit has made it clear, as Iridium said and as Judge Garrity said in LATAM, that you can sell the entire company for a good business reason. To me, that certainly drives people to a particular structure. It drives them to a sale, as opposed to a reorg. And yet, it has been clear since the 70s that you can do that, and reiterated in the very case you've cited to me. So, what

are you talking about? The structure has to actually be in the plan, not narrow people's options towards a plan. Right? Otherwise, we wouldn't be able to have § 363(b) sales.

MR. TROOP: Well, actually, Your Honor, I do think that's true. I think you can have 363 -- because --

THE COURT: Really? You think Judge Garrity didn't say that in LATAM, or Iridium say it? It's one thing to restrict options or leverage, which is perfectly permissible. It's another thing to dictate the terms of a plan treatment, contrary to the Code. So, let's go back to the PBC point. How does that dictate plan treatments if it's contingent on a plan being accepted and negotiated?

MR. TROOP: So, Your Honor, let me move forward, because -- and if I understood Mr. Shore's clarifications correctly, then what this settlement does is it gives people the opportunity to vote for a plan they don't want or against a plan where they give up all value. Because the definition of Debtor's plan, which is in the revised order, which appears nowhere, but as Mr. Shore made clear, and assuming that was accurate, relates to a plan of reorganization for the Debtors and -- for all of the Debtors, regardless of the proponent. Then, a -- then the confirmation of a plan of reorganization will result in a forfeiture claim that has a superpriority administrative

expense. And that does more than simply change the contours of the negotiations. That drives the result in terms of structure of the plan --

THE COURT: So does a sale of substantially all of the assets.

MR. TROOP: -- structure -- structure -- structure of the emergent entity.

THE COURT: Mr. Troop, so does a sale of substantially all the assets under § 363(b), if it's Lionel, as long as it's not because of undue pressure, and there's a valid business reason for it, it can be done.

MR. TROOP: But Your Honor, this isn't trying to -- this isn't -- this isn't --

THE COURT: So, I have to evaluate whether -- so, I have to evaluate whether it's a good business reason to put that choice to people. And I think Mr. Shore addressed it, and he addressed it in a way that is thoughtful, and one needs to think about it that way, as opposed to simply saying, it can't be done, because the case law is to the contrary.

MR. TROOP: Your Honor, I -- not I believe. We disagree on the case law and its limitations.

THE COURT: Well...

MR. TROOP: And Your Honor, it -- I believe, firmly, that the limitations imposed with regard to the

ability to proceed with a sub rosa plan are not eviscerated by the fact that you can sell all of the Debtors' assets in a Chapter 11 case. Chrysler, in fact, found that a sub rosa plan did not exist because the issues with regard to treatment and outcome were still subject to negotiation. And here, the issue is whether the combination is intended to stack the deck so, in response to, an agreement and a series of agreements which, notwithstanding the amendments that are being made to the order, results in the same outcome. And that is, if there is not --

THE COURT: Is that because of -- is that because of the public benefit or similar outcome revocation option, or is there something else besides that?

MR. TROOP: That's the focus, Your Honor.

THE COURT: All right, so, let's focus on that for a moment. I have read the objection carefully. The -- either your objection or one of the other ones attaches the letter or release that your clients made in respect of the public benefit corporation issue, and certain senators' statements regarding it. And I want to make sure I understand, notwithstanding Mr. Huebner's desire not to discuss this issue, the reasons why they are adamant on this point. Let me start with a couple of questions. I'm assuming - maybe I'm wrong - but I'm assuming that, first of all, the states that you represent continue to desire to

have as much value as possible go to abating the opioid crisis that would come out of this Chapter 11 case, right?

MR. TROOP: Balanced against the potential risk associated with states effectively owning a company, directly or indirectly --

THE COURT: Okay, so -- all right.

MR. TROOP: -- that it's supposed to regulate, and so Your Honor --

THE COURT: All right, so, I understand -- I -- let me stop there, okay? I understand, then. My second question was that, assuming that the goal is still to maximize value, the states are concerned about a potential conflict of interest and/or, I suppose, liability, although I find that to be a much more remote prospect. But they're concerned about a conflict of interest, right? Because they would be the beneficiaries of an entity that, notwithstanding all of the best intentions, might once again violate federal and state regulation in the sale of opioids. Am I right about that?

MR. TROOP: And Your Honor -- yes, Your Honor, but you can't discount the potential of liability as if that's going to --

THE COURT: Well, we can get to that in a moment. We can get to that in a moment, okay?

MR. TROOP: Yes, Your Honor.

THE COURT: But it would seem to me that a trust structure, there are beneficiaries in the sense that they would be receiving value, which then they would allocate as they saw fit to remediating or dealing with the opioid crisis. It would seem to me that if the asset were sold, the business were sold, that it was taxed, they would have a conflict of interest. In fact, they probably have a bigger one because they want it to make more money so they could have more taxes. And if it were sold, then you have no charter to focus on the public interest, and a shareholder obligation, to maximize profits, which leads to the potential for more abuse in the future, notwithstanding the existence of government regulation.

MR. TROOP: Your Honor --

THE COURT: This has led thoughtful people, including the author of, I believe, the most comprehensive and up-to-date history on this issue, David Herzberg, to suggest that really, you should have some structure that actually nationalizes a company like this. David Herzberg of White Market Drugs: Big Pharma and the Hidden History of Addiction in America, University of Chicago Press, 2020.

So, it seems to me there are hard choices wherever you go on this. The benefit, as Mr. Fogelman explained, of a public benefit corporation is at least that you build into the charter that maximization of profits, which Mr. Herzberg

points out with countless case studies, over 100 years of history, has led regulated drugs where the government has recognized that they have a valid purpose but can be abused, to be abused because of human greed. We can't get rid of human greed, but you can minimize it, and one way to minimize it is by having a charter that says greed doesn't come first. You don't get your bonus because of high profits. You get your bonus if you maximize the public interest.

So, it does seem to me that when one talks about a conflict of interest, one cannot be blithe about it. There are conflicts of interest inherent in a sale to a third party, in a taxation model, or in a PBC model, or in a trust. So, then you have the issue of potential liability. Maybe you could discuss that for a moment. It seems odd to me that a plan that sets up a public benefit company that is run not by the states but by a board charged with this task, that is independent, or some other structure that isolates the states from making the decisions, given the law in all 50 states on piercing the corporate veil, I'm having a hard time seeing a realistic risk of liability.

MR. TROOP: So, Your Honor, let me back up and reset for just a second. As the Non-Consenting States have told every party in interest who's asked in this case, we are committed to going down two paths simultaneously. That

is, is there an opportunity to sell the business to a third party and what those requirements and restrictions would be, and alternatively, is there a way to address what we understand to be the fundamental concerns inherent in the desire, at least by the Federal Government, to have a continuing-to-operate Purdue, which is a source of supply, that does not require a public benefit company, or some undefined term of an entity with a similar mission.

We are not so absolute, in anything in this case, about the realities that we all face in trying to deal with this company and its assets. And the issue here is whether the agreement entered into directs a particular result that is not subject to, or significantly not subject to, the normal give and take of a negotiated effort in a Chapter 11 case. The issue about the future of Purdue, its -- what it would look like, what the options are, are currently being explored and negotiated, both of the options that we've discussed -- that I've identified, the dual paths. The issue of resolving with the Sacklers is moving forward. It is doing it in the construct of a negotiation where a particular result or a particular party is not given the opportunity -- is not being given the opportunity simply to say, no you have to do it my way because if you don't, I get the value.

And I think that you can't look at this settlement

agreement, these combination of settlement agreements, assuming as, again, that I do, that the definition of Debtors' plan in the revised order is any plan for the Debtors, the allowance of a civil forfeiture claim and the plea agreement, which we quoted - I believe it's on Page 10 of the plea agreement - which sets out the results if a plan is confirmed that does not have a PBC or acceptable entity -- - or an entity of similar purpose, result obtains. And that is a very different change in dynamic than a sale of assets which monetizes all the value of the Debtors.

THE COURT: But a sale is the alternative --

MR. TROOP: Isn't it? Isn't it?

THE COURT: A sale is the very alternative you suggested. I think you just contradicted yourself.

MR. TROOP: No, I didn't, Your Honor, because I said --

THE COURT: How can it be a different dynamic than a sale?

MR. TROOP: Because there --

THE COURT: Because you stated there are two alternatives here: a sale, and a surviving entity that is dedicated to alleviating the opioid crisis.

MR. TROOP: Well, in both cases, the proceeds will be used to alleviate the opioid crisis.

THE COURT: And so would the sale proceeds.

Right.

MR. TROOP: So --

THE COURT: Both would.

MR. TROOP: -- so the question is, right, this settlement would seem to, or does, push down one track and not the other.

THE COURT: Right, but what I'm saying is --

MR. TROOP: Doesn't it?

THE COURT: -- is that if the Debtors proposed today, if they had a buyer today, all right, that would spend enough money to give the creditors in this case, and the Debtors -- enough so the Debtors would recommend that sale, and the DOJ came in and said no, we want a public benefit corporation, the response would be, it's a good business decision to sell the company, and we're not going to put off those options. We're making a decision now. It doesn't decide the terms of the plan. It just decides whether we go one route or another. And what you just told me is, we want to keep both options open. But that's not a sub rosa plan, just like a sale is not a sub rosa plan.

So, I have to weigh whether the option that the Debtor is choosing, which is not a plan but actually, just creates negotiating leverage for a particular plan, is a good business decision. And I go back to, I'm having a hard time seeing, except in the scenario where Mr. Shore posits

that a sale actually does maximize recoveries so that that money can, at the maximum amount, can be used to alleviate the opioid crisis, how this would actually come up in real life. And if a sale maximizes recoveries, I tend to agree with him, it's going to be hard for the government, at that point, the Federal Government to say, oh, no, no, we want to scuttle that whole process.

So, you know, perhaps the structure you're negotiating, and I think this plan certainly puts room in it, has a public component which includes a potential sale that maximizes total recoveries. Even though that sale will go to a third party who is only regulated, and who, therefore, may, in the future, do exactly what the government has gotten Purdue to plea to, today, i.e., because of human greed and the requirement that, for their shareholders corporations maximize profits, again, cuts corners around regulations and abuses the law. That's the risk of a sale. No choice here is really clean that way.

MR. TROOP: So, Your Honor, with regard to the sale option, I note only that, in the sale of the (indiscernible) business in (indiscernible), a continuing injunction was imposed on the buyer with regard to all of the very issues that you've identified, and that there are ways to construct a sale to maximize the unlikely result, right, or the likely result -- the likelihood of the result

that you've identified, one. Two, the -- if I understood you correctly, and Mr. Shore correctly, we should accept that, notwithstanding an approved agreement that would provide the Federal Government with a $2 billion-dollar -- whatever the hell a superpriority administrative expense claim is, in this context, that they will -- that it would -- that we should trust it will, nonetheless, choose to proceed with the state-driven abatement program, even though it may be forced to take a third-party buyer over its objection.

And Your Honor, that is the issue that mitigates against the argument that this is not directing the outcome of this case. It's also, Your Honor, interesting that the only way you get out of the result of this agreement is if the Debtors rescind it or if the Federal Government rescinds it, once you approve it. And the Debtors, who have spent a long time today touting the benefits of the settlement, all of it, including its downside, I think it would be hard to imagine that they will conclude they should rescind their part of the agreement.

THE COURT: No, but Mr. Troop --

MR. TROOP: Right? I mean...

THE COURT: -- Mr. Troop, the way the order has been revised, the forfeiture claim and the civil fraud claim will not be allowed claims if a plan is not confirmed. So,

if your clients decide that, truly, a public benefit company or similar --

MR. TROOP: Entity with a similar mission.

THE COURT: -- a structure that has a similar role or function, is just completely unpalatable to them, then, in fact, the agreement -- this part of the agreement won't go into effect anyway. It won't go into effect. There's no rescission. It's contingent on a plan being confirmed.

MR. TROOP: But Your Honor, that presumes we couldn't confirm a plan that doesn't have a PBC, right?

THE COURT: Yes, you could confirm that. That's right.

MR. TROOP: So, isn't that the improper effect of this settlement, that it says, you might be able to confirm a plan that doesn't have a PBC --

THE COURT: Right.

MR. TROOP: -- but if you do, we can proceed with the plea agreement, take the $2 billion-dollar forfeiture claim, and take all the value of the estate. Isn't that the way this agreement comes together? If anything, Your Honor, the changes highlight the fact that the circumstance that I just described is a fair reading of how the settlement agreement -- settlement agreements -- the plea agreement and the settlement agreement, would work in tandem. And it would work that way for each of the claims because they have

the same triggers. It cuts off the ability to pursue a plan of reorganization, by definition, would be cutting off your nose to spite your face. That's not -- and Your Honor, that is not what the negotiation process was intended to do, either generally in a Chapter 11; which is why there is a prohibition on sub rosa plans.

THE COURT: It's the same -- I come back to the same point, which is never addressed: It's the same thing as a sale. Because I think the plan that you are contemplating would be a sale plan, and that is the same thing. You could do it now without a plan. And that's the alternative you're focusing on. And it's the flip side of the coin. So, again, I have to evaluate whether people in government will act reasonably and rationally when all of the choices are put before them.

And, frankly, I'm still having a hard time understanding why, assuming that you can build some flexibility into the governance structure to pursue a sale that might make sense, with the types of protections that were built into Insys's, for example; not to have it as one that uses the value for the public benefit.

After all, that's what people are talking about here: not making a profit, except for the public benefit. And again, there are conflicts of interest in any one of these scenarios.

You have not yet answered my question. I don't see a reasonable likelihood that if they are merely shareholders of a public benefit company; just as if they were beneficiaries of a trust, that somehow they could be liable, through piercing the corporate veil or some other theory. You need to explain that rationale to me, because I just don't see it.

MR. TROOP: So, Your Honor, when you asked the question, "Are they concerned about liability?" and I answered yes --

THE COURT: Right.

MR. TROOP: I was not saying that they are concerned that they could personally, the estate could be personally liable.

THE COURT: Right.

MR. TROOP: Right? But what I am saying is, frankly, the same thing that we discussed on October 11 in the context of the preliminary injunction; when I said that it is a significant problem for the settlement to be based on continued value being received from foreign entities, who may also be improperly promoting or advancing the use of opioids. Because it doesn't matter whether the states can get tagged with a dollar number; it gets ...what matters is the reality that a statement that X states Purdue -- Purdue's, or X state's PBCs, opioids, killed someone.

There are layers of complexity here and --

THE COURT: Well, can we stop on that point for a --

MR. TROOP: -- and challenges …

THE COURT: Can we stop for a moment on that point? I am assuming that the following at least is true: which is that, the answer to that statement, which I guess would be in the press -- because it wouldn't be in the courts, because the Plaintiff would know they would lose in the courts -- but in the press is, we approved, in the bankruptcy case, a charter that said this company should be run X ways, to prevent that from happening. And we put all sorts of people in place; the equivalent of former Governor Vilsack, to ensure that. And notwithstanding that, unfortunately, this happened.

Now, you would equally have a statement in the press that said that state X pushed really hard to sell this business to company Y; which, you know, is located outside of the United States in country X. And guess what? Now country X is letting it sell opioids in America, and they've killed people. Is that press story any worse? I doubt it.

MR. TROOP: Your Honor, I don't think --

THE COURT: Because there, you could say they let it be sold to company X.

MR. TROOP: Your Honor?

THE COURT: So, let's get real about this, all right? It's nice to send letters, but let's focus on the actual conflicts and how to eliminate them, or at least reduce them.

MR. TROOP: So, Your Honor, that is the next point, which is that there is so much unknown about how these issues play out. And as I said to you, we're fully engaged, because we're not unrealistic about the potential --

THE COURT: But --

MR. TROOP: But Your Honor, about the potential --

THE COURT: But as I read the settlement -- look, as I read this settlement, which I have jurisdiction over, the language on this point is very broad and very flexible. So, you can do all that within this settlement. And, all things considered, if you still can't see your way to find something that either you or the government can agree on, the federal government can agree on -- now under a new administration, of course, a Democratic administration -- the worst you have is a claim that is substantially less than the forfeiture claim they've asserted.

But the main point is the language is flexible. And you can deal with those types of things in your negotiations.

MR. TROOP: Your Honor, at the end of the day, I

firmly believe that the most balanced result in this case will obtain if parties are able to negotiate these issues without this settlement approved. Everyone understands what the downside is. No one is saying it can't come later. But everyone is saying that this very issue, about flexibility, is not a bipartite agreement; it's a multi-party issue.

And I would hope that the reality of unstacked negotiations on these very issues would enhance the likelihood of a negotiated result. But any way it comes out, Your Honor, I've already told you, the nonconsenting states are committed to pushing down two tracks. And it would be appropriate -- without trying to reopen a whole can of worms, Your Honor -- but appropriate given the, at the very least, spirit of those cases which acknowledge that even very good results should be subjected to process. And that process is ultimately confirmation, and the process to get to it, would prevail here.

THE COURT: Which cases are you talking about?

MR. TROOP: I don't ...Jevic does that.

THE COURT: Jevic didn't even deal with a plan. It was a --

MR. TROOP: No, but --

THE COURT: It was either a chapter seven or a dismissal. And it was a priority-skipping order that said, "You shall make this payment." It wasn't a decision that

would affect people's negotiating leverage going forward.

MR. TROOP: Actually, it kicked the whole case out, right, Your Honor? The point from Jevic is that it says, even if the decision makes perfect business sense, even if the Court is convinced it's the right thing to do, there are times you say no because there's a process, and that process is the negotiating process that goes through to a chapter 11 plan of reorganization. So, Your Honor, I --

THE COURT: -- to have you read it, but that's not what the Supreme Court said. It was a specific priority-skipping payment that was directed by the Court. I understand the Court found that that was a good thing, because no one would get any money otherwise. And this way there would at least be some money to some people. But it was a specific payment. There's no specific payment here. This just changes leverage, although frankly, as Judge Kaplan, Lew Kaplan said, or Judge Sweet said, and numerous bankruptcy judges have said: you have leverage that's part of a settlement, and you have to deal with it. And the federal government has leverage here.

So, what, besides Jevic, are you relying on?

MR. TROOP: Your Honor, I'll stop.

THE COURT: Okay, because I don't get it --

MR. TROOP: I think there comes a point where it's clear that the candle isn't worth the wick. And Your Honor

--

THE COURT: If I'm misreading these cases, you should tell me. I really want to ...I mean --

MR. TROOP: I'm sorry, Your Honor. I'm sorry. I don't think ...as much as ...you know, I've actually practiced longer than Marshall, okay? And there's no one on this hearing who respects this process, you or what bankruptcy judges do more. But part of that calculus is to be able to say, I've made the points I would like to make and I'm not sure that there's any benefit to going on further.

THE COURT: Okay. That's fine. All right. Do you have other people who want to speak?

MR. PREIS: Your Honor, this is Arik Preis from Akin Gump on behalf of the Official Committee of Unsecured Creditors. I was emailing with Mr. Huebner. Is it okay if I speak now?

THE COURT: Sure.

MR. PREIS: Okay. Good afternoon. Again, for the record. Arik Preis from Akin Gump Strauss Hauer & Feld on behalf of the Official Committee of Unsecured Creditors.

Your Honor, we filed a statement with regard to the motion at Docket No. 19-20 last week. That statement was, as a number of people have said, intentionally cautious. I'm going to move away you were just speaking to

Mr. Troop about, but then I'm going to come back to it at the end of my statements, which are not very long.

So, with regard to specific issue that's in front of you, we come at this from a different perspective than you've heard this morning, and this afternoon.

From our perspective, resolution here comes down to one of the seven iridium factors; which is whether other parties and interests support it. And I think the debtors generally have it right. Pretty much, almost no creditor in their right mind would not support the economics of the DOJ settlement. If it's $225 million in cash, and an unsecured claim of $6 billion or so, that is a small fraction of the public side claims. And, therefore, when it shares in the public side distribution pool, it receives a small fraction of that pool. And for its part, the non-consenting group, as you've just heard, would also like a reference to the BBC removed.

If those three things were clear, and that was the deal, then we would be done, and I don't think we'd be having this hearing. But there are conditions. And while it's certainly normal to have conditions, the problem is, that PBC condition, is what's causing the heartache here. You've heard Mr. Huebner mention, and we've put it in our papers and you saw the mediator's report, that the private side term sheets agreed after six months of phase one of the

mediation, have a condition; requires the termination that the public side, which is inartfully defined, that a reasonable resolution with the DOJ is reached. There's no parameters around what that means.

We believe, as do the Debtors, and Mr. Huebner said that the provision was intended to ensure that the claims held by the public claimants; which are the residual owners of the Debtor's estates and, therefore, bear the entire risk of dilution by any claim asserted by the United States, would not be so diluted as to negate the economic terms of mediated settlements.

But in an effort to ensure that there's no confusion, and the case can continue building on each previous rung, as Mr. Huebner and others have said -- you know, we build block by block. We asked the public, does the DOJ settlement, as it currently stands, satisfy the condition? And the answer was, as we reported in our statement, it is premature.

They didn't put specifics around the word 'premature.' But we know, at least now for the non-consenting group, why they say it is premature. And while we could debate with the public side creditors whether that's an inappropriate response or in bad faith, or politically motivated, or otherwise, it doesn't matter.

And to be clear, we do take a lot of the comments

Mr. Huebner said, to heart, regarding what those words in the settlement should mean, and why it would be an awful result, everyone on this call knows, for the public-private deals to unravel.

I would further note, incidentally, that Mr. Eckstein, in his very brief comments in support of approval of DOJ settlement today, and with full knowledge of the issue, didn't change the state's response. But more importantly, that answer, it is premature; is not an answer that we're comfortable with.

So, we ask the Debtors, if the public side thinks it's premature to answer the question, and we know the public sides are asking for more time to work out the future of Purdue in phase two of the mediation -- and they've told us, and you, and now they've told you now publicly, that they're evaluating all alternatives, can we adjourn the hearing for a month.

And the Debtors' response was -- it's understandable -- no, because we don't want to take the risk that the DOJ walks away from the settlement. And the Debtors, understandably, like many creditors, would like the case to move forward. And they believe each block builds upon the previous block.

But, of course, the DOJ settlement doesn't allow the DOJ to walk away from the settlement, or terminate it,

if not approved prior to December 15. And we asked the Debtors, and Mr. Huebner was clear about this: Aren't you taking the risk that the deals were reach in phase one could unravel? And their answer was, "No, we don't think it's likely to happen. It could, but we don't think it's likely." And Mr. Huebner said that earlier as well. And others have said to us, "No, we don't think it'll happen, but if it does happen, we'll just litigate about it."

We simply don't share the confidence, or other parties' acceptance we just need to litigate it if it can be avoided. So, where does that leave us?

If a DOJ settlement, as it currently stands, is approved, the public-private side term sheets are at some level of risk; some people think little to no risk. We don't know. If the DOJ settlement, as it currently stands, is not approved, the DOJ settlement is at some level of risk. Neither of those outcomes are acceptable.

So, contrary to what Mr. Huebner mentioned, it kind of feels like any decision on this issue, potentially, should be adjourned for a short period of time so parties can resolve the issues. And we fully trust and expect that the public-side creditors are not seeking to modify the public-private side term sheet once their issues with the DOJ get resolved.

But we are not just thinking that an adjournment

is necessary without specifics. Rather, and this is where I want to get to the colloquy you just had with Mr. Troop, there needs to be some direction about what issues they should be discussing.

My feeling is that a lot of what you just discussed with Mr. Troop, as Mr. Troop was saying, needs to be negotiated directly with the DOJ. So, first, what do the words 'public benefit company' or 'entity with a similar mission,' mean exactly? We've heard different variations of it. The non-consenting student group raised this in their papers. We'd like to understand exactly what everyone thinks as well.

We all know what it means in the abstract. But all parties should get with the DOJ and understand this before we start litigating whether there is an issue with the DOJ settlement or not. Maybe there's no issue at all, and then the public-side creditors can give us the confirmation that we need, but we don't know yet.

Second, do the words 'public benefit company' or 'entity,' with a similar mission, mean that the future economic indirect beneficiaries of Purdue need to be the public-side creditors. You and Mr. Troop just had a colloquy about this. Could someone else own Purdue? Could it be a third party? Does that raise a conflict? What is the DOJ going to say about that?

And you said, I think, that you trust that if there was some third party that came along, that offered maximum value, that agreed to sell the -- to operate the company, in a morally, socially and ethically responsible way, and continues to supply oxycontin to the American public as necessary, that would be acceptable to them. We don't know that. That's not in the agreement. And until people talk about that and have comfort that, as Mr. Troop said, we can go down both alternatives at the same time, without needing to be locked into one -- which again, we don't take a position on, but we only take a position on it as it affects the previous six months of the case.

We can think of other issues, but these are the main ones. And again, none of this means that we think the DOJ settlement, if it sticks to the economics as laid out above -- sorry -- as I mentioned, is anything but a monumental achievement in this case. We've put that in our papers and we mean it. But there doesn't seem to be a reason it needs to be approved today.

We've found that in this case, in previous hearings, when Your Honor set the deadlines and mediation, and gives people clear direction. Things happen, so in thinking about all the various ramifications of what we've heard today, and what people have and have refused to confirm, we'd ask that you do the same here.

Thank you, Your Honor.

THE COURT: Thank you.

MR. HUEBNER: Your Honor, there may be another objector or two, who would like to speak --

THE COURT: Why don't I just give them a chance to speak -- Mr. Quinn are you --?

MR. QUINN: I am. This has been a long open mic, Your Honor.

THE COURT: You can go ahead.

MR. QUINN: And I forgot my guitar, so I apologize. It's Michael Quinn of Eisenberg and Baum for the Ad Hoc Committee on Accountability. Your Honor, I really don't want to duplicate what's been discussed, both with the sub rosa, you know, the legal sub rosa issues, as well as some of the topics covered regarding the public benefits company. However, my points do focus solely on the Public Benefits Corporation contingency, and my client's deep-seated fear of it.

First, I want to talk about how the DOJ settlement process was wrong. Second, I'll touch very briefly about how the results of that settlement process was wrong, but I don't want to waste anybody's time. And third, I'll give you my suggestion as to what the Court can do today about it.

First, the process that led to the DOJ settlement

is deficient, because the parties who negotiated the deal didn't get input from the people whose input is required. My clients and other victims of Purdue, made repeated attempts this past year to meet with the DOJ about Purdue's crimes.

The Crimes Victims Rights Act, 18 USC Section 3771, grants victims the reasonable right to confer with an attorney from the government in the case. The DOJ ignored these victims' requests to meet.

Your Honor, I think it's very important for criminal and even civil prosecutors within prosecutorial offices, to meet with victims. I see it in New York City with normal crimes that are committed, and I think it should apply equally here.

The influence of having a victim speak to a prosecutor is a significant part of any criminal and civil case. Instead, according to Purdue's legal bills, filed in the bankruptcy, and Purdue's reply filed yesterday, the DOJ got to meet with Purdue and Sackler attorneys under a joint defense agreement for over a year and a half.

These closed-door meetings resulted in the peculiar mandate now before the Court being argued so vigorously. They want to transform Purdue into either, as I've been told, a Newman's Own-like company, or a government-sponsored oxycontin business.

The negotiation between these two parties, the DOJ and Purdue-slash-the Sacklers alone, is not sufficient to make this kind of policy decision.

The federal government often solicits public comments on DOJ settlement terms that affect public health before settlements are finalized. There's little doubt in anyone's mind, including the 80-plus lawyers here today, the decisions made today and in the future in this bankruptcy, will severely impact public health.

It's not good enough for DOJ prosecutors and Purdue's sharp lawyers to think about these concepts in private, sign a deal and file this motion. The DOJ neither invited input from Purdue's victims, nor the public, nor, apparently, any members of the House and Senate; who, as you mentioned Your Honor, objected to this formation of a government-sponsored business; or, as I've been told, a Newman's Own, or like a Patagonia company.

Turning to the second point, Your Honor, and I'll just touch on it briefly, I had some prepared thoughts about it, but I really don't want to go down that rabbit hole again.

My clients and other Purdue victims don't want the government involved in the business of selling oxycontin or being the beneficiaries of a business involved in selling oxycontin.

My clients, in 2007 -- there were three of them -- as I attached in an exhibit, begged the Court, after the last DOJ settlement with Purdue, to have accountability, and to sort out something that would save lives. My other clients, after my first set of clients begged the Court during last Purdue settlement, had the consequence -- you know, suffered the consequences of a failed DOJ settlement.

You can understand, Your Honor, why we stand here today trembling before you, concerned that some conversation between a couple of lawyers and the DOJ's lawyers, and a number of hours spent hashing out a negotiation, scares the pants out of us.

Your Honor, what I've heard today regarding the public benefits company, is that vague answers -- I've heard vague answers to what's going to happen with Purdue moving forward. And I know the Debtor has minimized this point; that there's a really great deal here, that the federal government was so beneficent that they only charged Purdue with a small fine; that the federal government was so amazing that they can charge Purdue, the carcass of a company, with three felonies; that, how wonderful this was, because the other creditors are going to be able to maximize a payout for abatement.

But Your Honor, we think there's a huge mistake here. We think the process that the DOJ went through was

wrong. We think that the results, which are completely vague and baffling to me and my clients, is wrong. You know, we're just kind of sitting here in shock, Your Honor. And I know it may sound -- go ahead.

THE COURT: Could I ask you this? What exit vehicle would your clients prefer? Or do they just want to be involved in determining the exit vehicle?

MR. QUINN: I think it's time that they be involved in determining the exit vehicle. Your Honor, they've testified at FDA hearings they were turned down. They've showed up to Court; they were turned down. You know, they try everything to get involved in the conversation. And Your Honor, the only reason we didn't go under the tent and sign like some kind of confidentiality agreement, was because, you know, my clients are outsiders; but they really want a chance to be heard.

If the mother of a murder victim wasn't able to speak to a prosecutor, to spill tears in front of the prosecutor before the prosecutor reached a deal with the murderer, the entire city or country or the world, would be in shock. And that's -- you know ...okay, go ahead.

THE COURT: But again, my job is to decide whether the settlement is fair and reasonable from the perspective of the Debtor, is the state and the parties in interest; not from what the DOJ --

MR. QUINN: I don't think it's fair and reasonable.

THE COURT: Let me finish. Not from what the DOJ should have done -- so, really what I'm asking -- and you don't have to have an answer on this, I mean not a specific answer. But I do want to know, is there a specific exit structure that your client support? Or just that they want to be involved in that --

MR. QUINN: Both, Your Honor.

THE COURT: I'm sorry, I didn't hear that because there was some paper rattling.

MR. QUINN: Sorry. It's not paper, I'm sitting on a very old chair.

THE COURT: Okay. Well, maybe you should stand up so it doesn't break. But which? Is it both or is it one or the other? I just would like to know that.

MR. QUINN: Your Honor, first of all, my clients recognize that the process was fishy, to say the least. You know, they or the other 140,000 victims -- you know, even like creating a group of them to speak with the DOJ, would have been fine. But those requests went unanswered by the DOJ.

Secondly, when it comes to matters of public health, we believe that the DOJ has a responsibility to reach out to victims of crimes so that future issues aren't

repeated. They didn't do that. They were so nice in 2007 to invite some of my clients to testify at a --

THE COURT: Mr. Quinn, I don't ...I can't tell the DOJ what to do. And in fact --

MR. QUINN: I understand.

THE COURT: -- my role is not to evaluate this settlement from the DOJ's perspective. I'm focusing on, again, from the Debtor --

MR. QUINN: Is it fair and reasonable?

THE COURT: -- the Creditors' perspective, what is it that your clients would like? Is it simply involvement? Or do they have a specific view yet? Or you know, that's all --

MR. QUINN: Both.

THE COURT: They would like involvement to discuss this condition, specifically. They're not -- you know, they go way beyond -- pecuniary interests are not their only interests. If it was, they would be represented by White & Case.

Secondly, they believe that there are other options besides turning this into a vague public benefits company, that could maximize creditors, you know, what the creditors get, and preserve the health and safety of individuals and families in this country moving forward. I understand that we're looking to write creditors and

individuals, governments, cities, towns, who were wronged.

But Your Honor, my clients are like the Ghost of Christmas Past; they're here to tell you, in 2007, they saw there was a problem; the problem got worse and this is our moment, their moment, to tell you we got to make sure that the future is safer.

Their position, even though we haven't spent a ton of time with it, is that this carcass of a company should be sold off to private hands. The reason they believe -- go ahead --

THE COURT: No, go ahead.

MR. QUINN: The reason they believe that this carcass of a company should be sold off to private hands, is so that there is less influence or opportunity for problems, with the government being involved in this company. And also, whoever buys this company is walking in, in 2020, 2021; they're not walking in, in 2007. They're not walking in with a fleet of lobbyists, with really good relationships with Congresspeople. They're not walking in with, you know, the social capital and political capital that the prior owners had.

We believe that a private owner can come in, with very strict modifications, come in, buy the company, and operate it because, like you said, Your Honor, there are very few beneficial uses for oxycontin. It is a company

that can generate money, but we do not want it to be a company to maximize making money.

THE COURT: Well, but a private buyer, buys it to make money.

MR. QUINN: Yeah, but a private buyer can -- look, Your Honor, a private buyer can always make more money by doing nefarious things that, like Purdue did for the past 20 years. They don't have to. I think somewhere along the line, we've forgotten that like not every company, just because it's not, quote, unquote, has a term in its bylaws that says it's going to do good, can still act within the bounds of the law.

Most companies actually do. I mean, probably the companies you see more often than not maybe don't. But most companies in this country do act within the bounds of the law. They respect government rules and regulations; they want to make a profit, but it doesn't mean that they're willing to jump over that line and do illegal things.

THE COURT: I guess you're not involved in the multi-state NDL against the drugstore companies and the like.

MR. QUINN: No. No, Your Honor, I'm not. I can only do so much.

THE COURT: The Plaintiffs in that case might disagree.

MR. QUINN: Well, Your Honor, Johnson & Johnson got out of the opioid selling business. Like, plenty of them have moved on. Insys didn't go so well, but --

THE COURT: I agree with that. But someone that's going to be buying it, isn't. They haven't. They haven't moved on. Anyway, I think this --

MR. QUINN: Look, I don't think being able to put -- I don't think this whole thing should be hung up on being able to put in a, you know, allow Purdue to reach beyond what it should be doing and put in a term in a bylaw that says, "We're going to do good," like they did in Paul Newman's salad dressing company. You know, I'm not even sold on the -- you know, and my clients don't understand how this fix is going to really change anything.

There's nothing wrong with making money, Your Honor. I think everybody here agrees with that. There is something wrong about making money by breaking the law. And you know, if the government can stay on one side, and the business can stay on the other side, and the government will watch the business and the business will know that the government's watching the business; that the business has already had a conversation with the government, and the government's saying, "You better not break the law," and that relationship continues, Your Honor, I think we're going to be moving into a better situation.

THE COURT: Okay. Well, all right. Thank you

MR. QUINN: You're welcome.

THE COURT: One would think that that was the message that went out in 2007. And, of course, the Sacklers would not have anything to do with this company in the future. But I understand the point about vagueness, and the desire to have some more structure around it. Alternatively, there's a point that says that it's deliberately flexible and deliberately vague, so that the parties can put the structure around it. And I guess that's what I have to evaluate.

MR. HUEBNER: Your Honor, let me, of course, first ask, are there any other people on the Objector's side before, I think, respond to (indiscernible) the last couple of hours.

THE COURT: Well, I said that I would entertain the Professor's request to file an amicus brief after I heard from all of the Objectors. And I think I've heard from all of the Objectors. Professor Lipson is on the phone.

Professor Lipson, I don't know whether having heard them and the argument today, there's anything that you believe can be added that isn't duplicative?

MR. LIPSON: Your Honor, this is Jonathan Lipson for Temple University on behalf of the proposed amici. Can

you hear me okay?

THE COURT: Yeah, I can hear you fine.

MR. LIPSON: Thanks very much. We really only have two other very brief points to make that I don't think have been addressed by anyone who has objected to this point, or that we have found in any of the other objections or statements submitted.

And so, I guess if you'd like, what I'd like to do is just take a moment to argue our motion for acceptance of our brief, and in the process, to explain those two things that we think are important, but that may not have been addressed by others, if that's acceptable to you.

THE COURT: Why don't you address the two things?

MR. LIPSON: Sure. I think that ...as we read the Debtors' proposed settlement, it creates a proposed repository, a public repository, of documents that would be produced by the Debtors to DOJ, in connection with its investigation. That is, you know, obviously a laudable thing to do. But as we say in our brief, the timing and the scope are potentially problematic.

As we read paragraph ten of the, I think it was the third revised, proposed order that we circulated later this morning; information produced by the Debtors to DOJ won't be released to the public unless and until three conditions are met: Number one, an order confirming a plan

is final and non-appealable; number two, DOJ has approved a release of the documents, and number three, the documents are found to be non-privileged.

What we're concerned about is that much of this same information, in those same documents, may also be vital to any disclosure statements that the Debtors would present in support of a plan of reorganization.

Our concern is that Debtors will not be able to disclose this information because this order seems to say that it can't be released until those conditions are satisfied.

THE COURT: That's not true, right? Mr. Huebner, you're going to have to disclose whatever you need to disclose as part of a disclosure statement, right?

MR. HUEBNER: Your Honor, it's not true at all, and --

THE COURT: That's fine. It can't be. So, let's move off of that point. That's not the meaning of that paragraph of the order. It doesn't give the Debtors a free pass to just file a disclosure statement that, unlike this hearing, for example, which has now gone on for about four hours, on just this motion, doesn't adequately inform the parties and the Court of the basis for a confirmation of a plan.

MR. LIPSON: If Mr. Huebner is clarifying that the

--

THE COURT: It's done. It's clarified. There's no issue about that.

MR. LIPSON: Then I think ...that's our underlying concern about both this case and the effect that this case will have on future mass tort debtors, because we ultimately worry that, you know, there will be third party releases in this case, and there has to be adequate information in a plan in order to make it possible for creditors to vote for or against that plan, including with respect to the shareholders of the Debtor.

If the proposed structure of the public repository doesn't restrict that, that's very helpful. We obviously share the other concerns that others raise, but we don't want to -- me too, that's our only sort of systemic point, were concerns about the flow of information in this case, and what that would portend, both for this case and for those in the future. And I'll stop there, Your Honor. Thank you.

THE COURT: Okay. I want to be clear, by saying what I said, it doesn't mean that the Debtors have to disclose everything that they revealed to the Department of Justice in some future pleading in the case. It's tied to what is necessary and appropriate for whatever pleading that they have filed to sustain the burden of proof. I think

that law professors would understand that.

MR. LIPSON: Thank you for the clarification, Your Honor, and thank you, Mr. Huebner.

THE COURT: Okay, very well. All right.

MR. HUEBNER: So, Your Honor, I guess I'm going to try to be pretty brief. We actually are moving towards the sixth hour of this hearing, but I think there are some things to be said. Because we ended up sort of having the open mic session that I feared.

And frankly, as important as this hearing and this settlement is, obviously, there are equally important things still ahead of us. And leaving here, even with a complete victory in terms of the order, but with, will be some clarification from the Debtors' perspective, so that everyone who is listening understands what we're thinking and why we're thinking, and a little bit better, I think would be useful.

But let me first talk about the parts of the last hour and a half or two hours that were actually objections.

First of all, just positionally, I do want to note -- I'm not sure I've ever seen Mr. Shore in the middle before, as opposed to one of the ends of a dispute. So, that, actually, sort of makes this a remarkable day in its own, and I do want to thank him again, formally and publicly, for their very constructive engagement. We agree

with many of the points they made.

One clarification, because this is actually quite important to us: There is no question under the documents, and it was absolutely understood and agreed by both the Debtors and the DOJ from the beginning, that the criminal claim and the forfeiture claim, could not be allowed until well after the confirmation hearing. What the documents originally said was, that that happened after the sentencing hearing, and the sentencing hearing happened 75 days after the confirmation hearing.

And so, to be clear, this was not a change; it was always the case, which is one of the 83 things that makes this not a sub rosa plan, under directly governing law; that things are conditioned on confirmation. They just can't be -- one of the cohorts, it may have been Empire, said sub rosa, by the way, is completely the wrong Latin term, and it's actually confusing. The right term --

THE COURT: Mr. Huebner, you said you were going to be brief.

MR. HUEBNER: Okay, never mind, keep rolling. Let's talk for a minute about the law, because there were three cases discussed and I'm going to hit each of them for about a minute. And I think that will make at least the Debtors' views very clear.

Number one, bizarrely, Mr. Troop tried cited

Chrysler. Chrysler was a priority-skipping plan. It wasn't just a sale. Because in your colloquy, you clearly understood and noted and told everyone, a sale of all the assets itself is way more sub rosa than this. That one went far beyond that. It was the subject of incredible scholarly and professional discussion afterwards, because it gave the union benefit funds, a direct recovery in the new entity; which moved over all of Chrysler's asserts, basically, lock, stock and barrel, while not paying secured creditors, who were senior to them.

Whether or not Chrysler would pass muster under Jevic, I don't know. But there's no question in the world that the fact pattern in Chrysler is way, way, way beyond what we're doing here.

Now, let's talk about Jevic, which is great. And it's great for us, because what Jevic actually held, exactly as Your Honor pointed out, is that they granted cert to decide the specific question of whether a ...where a carefully constructed dismissal of a case that mandated distribution of proceeds in a matter directly inconsistent with the Bankruptcy Code, was to be allowed, even though it was kind of Pareto efficient; because the people who are being skipped over and getting nothing in the structured dismissal, were also getting nothing in a regular chapter 11, because of absolute priority.

What the Supreme Court held was that a priority-skipping structured dismissal that, if it were a plan, would be insanely illegal, is beyond the powers of a bankruptcy court. And, buy the way, it actually also said, in part, that's because, and I quote, "...the priority-violating distribution is attached to a final disposition; it does not preserve the debtor as a going concern; it does not make the disfavored creditors better off; it does not promote the possibility of a confirmable plan; it does not help to restore the status quo ante; and it does not protect reliance interests. In short, we cannot find that the violation of ordinary priority rules that occurred here has any significant offsetting bankruptcy related justification." That's at page 11.

THE COURT: And of course, it also said that Iridium is probably still good law.

MR. HUEBNER: Yes, in actually the same paragraph, Your Honor, on page 11, I actually read you the bottom of it, but it actually begins with citing Iridium at the top of it, and goes onto site Cybergenic and K-Mart and RadLAX.

So, I'm delighted to discuss Jevic all day long, because I think it affirms this situation in spades, as does the more recent affirmance of Your Honor, in Empire; where the Court actually dealt with the JEVIC argument in the context of an RSA that, again, did lots of things we are not

doing, like demanding mandatory third-party releases and lots of other things. And exactly as Your Honor ruled -- I mean, I hate to do it, but just what it says -- "As Judge Drain observed at the hearing, the RSA is in agreement about supporting things, not in approval of the sale. All plan terms remain subject to confirmation of the plan. And the RSA left open the possibility that an offer better than the stalking horse, could be made and accepted. The RSA simply did not, as Appellant argues, settle the precise outcome of the organization." That's on page seven.

And then, on page eight, "The Court describes Jevic in detail and says that it is totally inapposite because this is an RSA assumption order, not a sale or plan order, that has priority skipping, to which Appellant did not consent."

So, those are the three cases you were told about. We have about 80 more of them in our brief. The law is just completely clear.

So, now, let's talk though, about things that may be as important. And again, Your Honor, I am trying to be quick. I've crossed out a lot of stuff. But on some level, we aren't -- maybe today is setting the stage for the whole rest of the case, and many of our most, candidly, beloved and important stakeholders are listening, and it matters.

Number one, the statement that Creditors are being

asked to go to give up all value unless they accept a plan that they don't want, it's just not true. This Debtor right now, has $3 billion at a minimum, expected to come in from this Sacklers; over $1 billion of cash on the balance sheet, which has gone up since the filing date, despite the horrifying expenses of this case; billions of dollars in operating assets, and hundreds of millions of dollars in insurance policies.

The fact that, if the DOJ believes that the emergence does not meet the requirements of the justice manual, and longstanding policy of piling on abating the opioid crisis, would allow them, if we were to decide to proceed with a plan. And if enough of our creditors were to support it, and if the Court were to find that confirmation standards were satisfied, there would still be billions left for everyone else, as opposed to not having a DOJ deal, and being indicted and excluded from federal programs, and possibly losing our state and federal licenses, and then facing unsettled $18.1 billion plus of alleged (indiscernible) claims.

We're doing this for the other stakeholders. Frankly, as much or more than we're doing it for the DOJ. We're doing it because it's in the best interests.

Your Honor, I officially beg, I am begging creditors and stakeholders not to dig in on their vision of

what is or is not a PBC. We've come a long way since the beginning of this case, and we have listened and adjusted and listened and adjusted.

Purdue is pleading guilty to multiple felonies. Purdue is not emerging from chapter 11. Its assets are being ripped away on the effective date and put into either -- we'll talk about a magic sale in a minute -- or a triple blue chip, brand new, clean saferoom, to sell opioids in the safest possible way.

We deeply, deeply respect the policy concerns -- not only of the dissenting states, but of the consenting states. There are groups, including me and corporate lawyers and trust lawyers and tax lawyers, from many law firms, meeting every day to attenuate and balance the concerns that everyone is talking about. We don't want to own it. We're not going to own it. We're not even going to own it for tax purposes. We're not going to control it. We're not going to be on the board. We're not going to be trustees.

It's that get it. Of course, we get it. And the goal is to design something that just balances all of these concerns. Winning today's hearing is not the goal; it's one goal. This settlement could be -- without it happening -- the (indiscernible) demise of billions of dollars in value. But we still need to get the rest of the way there.

So, Your Honor, let me express a couple of quick things on that point.

Number one, as you basically kind of connect for (indiscernible) some of the objectors in your colloquy, what they're saying is, because the DOJ's condition to the credit is something we don't like, it's not okay. But if it was something we did like, it would be okay. Just like in our own deals, we have things we do like. And of course, we didn't insert conditions, precedents, that we don't like.

That's kind of a checkmate, because, basically, it's an admission, that as long as they like the conditions they'd be just fine; but because they don't, it doesn't make them unlawful, it just allows the DOJ to have a view of their own, just like some of today's objectors have views of their own.

Let's talk for a minute about this thing of 'we have no choice,' because it's not true. I can think of three choices in about ten seconds.

Let's assume, for a minute, that the world is completely backwards, and the worst fears, as articulated by Mr. Troop, comes to pass; which is, somehow, even though the Debtors are the ones who have consistently modified what it means, but believe in a PBC, we somehow go forward with a no-PBC plan. In other words, we propose a non-PBC plan. There aren't no options, Your Honor. There are a minimum of

three options, and actually more.

Option one, accept that the DOJ is going to get $2 billion and take the other four, five, six, seven, whatever number it is, billion dollars, for the rest of the creditors.

Option two, which I think is by far the most likely, is since we're only going to do things that are in the public interest, and the best interests of America, the play in the system, and the flexibility, result in the DOJ and all the states, and the Debtors, having a conversation and figuring it out, and working out something that meets shared policy goals, to do the best for the American people, and save as many lives as they want, as we possibly can.

Option three is oppose confirmation. If you think the plan is unlawful, because it gives the DOJ a $2 billion forfeiture claim, and that it doesn't meet the confirmation standards, vote against it. This isn't a priority skipping structured dismissal, where once this order is entered, I paid you your creditors and skip senior creditors. These claims don't go into effect, and they never did, until the confirmation order is entered, pursuant to the dictate of the Bankruptcy Code.

Your Honor, we all want the same thing, we really do: continuity of supply, safety in the provision of the medication, maximization of value, development of important

medications. The DOJ is allowed to have a view about how they think that is best effectuated.

To tick down some final issues, Your Honor, with respect to risk of liability, I think it's behind us already. But just to be clear, we have like --

THE COURT: I think it's behind us. We can move off of that one.

MR. HUEBNER: Okay, done. Your Honor, Mr. Preis, exactly as I feared, sort of semi-hypnotically, you know, brought to you the siren song of there are no walkaway rights for the DOJ, can't you just adjourn?

Again, this is a question, as I think I spoke about at some length, about balancing risks and business judgment. We do not share the view -- do not share the view -- that there is not material risk to the Debtors of a devastating change of direction of these cases if this is not entered. It's just -- it's our view, and it is an informed view. We chose among risks, and risk we --

THE COURT: What is it informed by, Mr. Huebner? Because the agreement itself doesn't preclude me from adjourning it.

MR. HUEBNER: That's true, Your Honor. And for reasons relating to admission (indiscernible) interest, because if this happens, there may well be disagreements over it. Suffice it to day, and I would prefer not to say

more, that the criminal jurisdiction of the Department of Justice, is very likely not constrained by the agreements that were signed with respect to its ability to move in different directions with respect to indictment and prosecution.

And in particular, or even more so, because, obviously, this Court, you've said a thousand times, has no jurisdiction over the criminal authority of the United States of America. And there are also multiple US attorneys' offices involved, as I think this Court knows.

Suffice it to say that we are not at all sanguine, as I said in my opening that, you know, essentially, there could be a free extension here, because we don't think that at all. And that's why we have chosen to move forward today, because we think it is not even a question as to whether the risk of the potential parade of horribles, of frankly, the expressions of unhappiness of the objectors, versus not having a new deal in hand, is not even close, Your Honor. With respect to --

THE COURT: Mr. Fogelman, again, I'm going to put you on the spot, but the criminal side of this deal -- so, it's a signed agreement, so I'm referring to it as a deal -- the criminal side is something that the DOJ could -- or an attorney general -- I'm sorry, Assistant US Attorney in, I don't know, in New Jersey or in Vermont, could change or

renege on?

MR. FOGELMAN: Your Honor, first let me just state that we have no present intention to back out of the plea agreement. That said, I cannot tie the hands or make any promises or commitments on behalf of the multiple criminal teams of prosecutors from the District of New Jersey, the District of Vermont, and the Consumer Protection Bureau of DOJ. We don't know what's going to happen in a week, two weeks, three weeks, a month from now, two months from now, three months from now.

With regard to Your Honor's question about the law, my general understanding is that the government can withdraw a plea after it's accepted by the defendants, but before it's accepted by the Court, so long as there is no detrimental reliance by the defendant. And that's United States versus Kuchinski, 469 F.3d 853.

And I'll admit, I am not a criminal lawyer, Your Honor. I wanted to try to familiarize myself with this area before today. So, that is really based on a cursory understanding.

But that said, the Debtor as well has the right to pull out of a plea under Rule 11 of the Criminal Rules of Procedure. And the United States very much wants this to go forward. We want -- you know, under the agreement, we've arranged for there to be a request to the District of New

Jersey to have a plea hearing within a week after approval of this order. We want that to go forward, Your Honor. We want Purdue to plead guilty for the three felonies that have been charged, that are in the plea.

We have no heard why this should be deferred. Thank you, Your Honor.

THE COURT: Okay thanks. Mr. Huebner, I'm sorry I interrupted you, but you can go ahead.

MR. HUEBNER: No, that's okay. And as you might imagine, Your Honor, we have quite a few federal prosecutors and criminal lawyers, former, on our team. And our view that there is risk to the estate, I can assure you, is well founded.

With respect to Mr. Quinn, let me be relatively brief, because he said quite a few things about his understanding of the DOJ deal. I just think, respectfully, to Mr. Quinn, who actually pled quite a lot, many of them are just wrong wronged. And it's not right that the record should be left with those things (indiscernible) someone's statement of fact.

Number one, I don't believe there's a joint defense agreement between the United States of America and Purdue. They are the prosecutor; we are the defendants --

THE COURT: No, I think what he said is that there was a joint defense agreement between the Sacklers and

Purdue.

MR. HUEBNER: No, he actually said between Purdue and the --

MR. QUINN: No. Sorry, Marshall, I meant between the Sacklers and Purdue there was a common defense agreement.

MR. HUEBNER: Okay, understood. I don't think it's what you said, but it's fine. Number two --

MR. QUINN: I'm not a great lawyer, but I would recognize there's not a joint defense agreement between the government and a private entity. I can't think of one anyway.

MR. HUEBNER: Number two, Your Honor, Mr. Quinn, many times, used the phrase 'Purdue-slash-the Sacklers.' Again, so that the record is clear, the Sacklers have left the building about two years ago; are not on the board, have no rights and no powers over this company, have no executive functions, receive no remuneration, receive no reimbursement, etc.

This is a debtor-in-possession, a chapter 11 estate, with a sworn duty to maximize value and do the best it can for its creditors.

The kind of suggestion that Purdue and the Sacklers are in this together is really completely false. And frankly, really not helpful. Purdue and the Sacklers

largely parted ways a while ago. And as this Court and all people know well, the Debtors are actually the Plaintiffs, and owners of billions of dollars of potential claims against the Sacklers. The special committee and others have been at work on that for well over a year and a half.

And, you know, Alix Partners, we have a special committee that's published 1,000 pages of reports, etc., etc.

So, this insinuation, which still appears in the press, of Purdue, quote, "...which is controlled by the Sacklers …," it's deeply wrong and deeply, deeply unhelpful. They are the descendants. They are not the shareholders anymore, from our perspective.

Your Honor, other things like a couple of lawyers (indiscernible) a couple of hours, this is fishy, to say the least. I won't even pause on those. This is a multi-year investigation with hundreds of -- thousands, probably -- of hours, from multiple prosecutorial offices all around the country. And it's just -- it's not fair to say things like that when they're not true.

With respect to potential involvement in the design of the PBC -- I do say this very respectfully: I don't believe I have ever once, once minimized or denigrated, God forbid, the pain or the loss or the suffering of any victim or person impacted by this or other

products.

So, the end of the day, Mr. Quinn represents five individuals. And candidly, I call him a lot, and I offer to talk to him a lot. You know, any time he files an objection I make time for him and he's very gracious; I say sorry, 11 o'clock at night is the only time I can talk. The notion that he's sort of frozen out -- I actually have also offered twice to meet with his clients directly.

And I would say one thing, which is, he referenced several things -- frankly, twisted -- that were in our settlement conversations over this motion, including me trying to explain to him what the PBC is and how we're thinking about it and why. Suffice it to say that we sort of view it a little bit differently.

Your Honor, the assets of this company are not a carcass -- another word that Mr. Quinn tossed out quite a few times. As I noted before, there is billions of dollars of value here. And this is something that we actually all, including, I believe, Mr. Quinn and his clients, care very much about; which is, what is the best way, balancing other concerns, like the state's understandable, extreme antipathy for owning or controlling these assets post emergence, to get the most value, to the American people.

It's not a carcass, it's billions of dollars. And actually, exactly, to get it as right as we can, is actually

extremely important.

With respect to that, there were some bizarre moments in colloquy where I thought I heard someone saying, you know, I trust a private, profit-seeking owner, whose only goal really is to make money, you know, maybe more over a structure I don't even know about Like, we are contemplating a triple blue chip structure that has a brand new co, with new management and new directors, with a top co on top of it, with new trustees, and an abatement trust on top of that, with the same overlapping trustees, all selected in blazing sunshine, with extraordinary records -- exactly as this Court pointed out, just like Secretary Vilsack; people of impeccable finance and public health, DEA, etc., experience. And the flexibility that's built into the structure to let the major parties in this case figure that out together, is what we're talking about.

Let me say one last thing, because it's also important to say -- actually, I apologize, two last things, and then I will be done. But this is really just so important.

Number one, there's a fact I wish I could change, but I can't, which is: Even though Purdue makes quite a few other products that get lost in the shuffle of oxycontin -- famous products, like Betadine and Colace and Senokot, and a lot of generic drugs, the reality is that as of now, the

substantial amount of Purdue's value and revenues come from oxycontin. It's not a fact I can change. No one can change it. Just like tobacco companies get the cash from tobacco, we get a lot of our cash from oxycontin.

And so, you know, people talk about, "I don't want tainted money," or 'blood money' or 'oxy money,' but you can't regress that out of the equation; it's not possible. Whether the assets of these debtors are sold next week, next month or in five years, it is an immutable fact that stakeholders will be getting a substantial majority of their value from oxycontin. That's either the cash from past sales, the revenues from future sales, or the proceeds of the sale of those revenues.

If people don't like that, they should withdraw their proofs of claim, and not seek distributions under the plan, and leave these proceedings, because we have no other way to create value to abate the opioid crisis, and redress the wrongs that Purdue's criminal plea and lack of emergence from chapter 11 represent.

Finally, there's the question of the sale. So, let me be clear on this as well. We understand conversations go on four, five, six, eight hours a day, about the best way forward. And frankly, we have some pretty different views, that a minority of predators in this case -- and I think an awful lot of people have our view.

And that's okay, it's not over yet, and the conversations are still continuing.

If a magic purchaser appears on a unicorn, and offers us full value for the assets, or close enough to full value, that we and many, many involved creditors in this case, believe that the value loss is tolerable, even though it comes right out of abatement, to side step completely the structuring that has to be done for the attenuation of the fact that governments --

By the way, to be clear, they're not going to own it, and they don't have to be the residual beneficiaries. There's technology for every one of these issues that, in fact, we're discussing in the background.

But if such a purchaser does actually arrive, it may make sense. And if that purchaser agrees to run it, essentially as a PBC, and agrees to have the self-injunction and agrees to be, as we envisioned NewCo being, the safest, most restricted seller of class two narcotics in the country, and wants to give abatement money to us up front, in a huge slug -- obviously, it's our job to do that.

The problem is, from everything we have seen so far, that is not remotely likely to happen. And I'm going to give only one example -- which Your Honor, the reason I'm doing it in part, and I'm very close to done -- is because you did it in part. And I actually think that it's helpful

for people to understand why we think it is so unlikely that it's going to make sense; not that it may not make sense to sell some or all of these assets; maybe even very swiftly post emergence; maybe some in six months, some in 18 months, some in 36 months.

That's what the new blue chip, triple blue-chip structure is for; which is to figure out those questions without a fee burn that's approaching $1 million a day, and the damage to the business that goes on every day we stay in chapter 11, and our fate is not known, and many other things.

So, let me just do the math, because I actually think that it's helpful. Your Honor alluded to it. I'm not talking, by the way, about the conflicts of interest. The governments get a bunch of money either way, whether it's the capital gains of the purchaser, the due on sale, NOL, operating revenues at the entity that are taxable in the hands of a new purchaser; there are many, many ways that some states might actually have a much more direct economic stake in the income generation capacity of this company, than they would with their tiny fractionated ownership rights of the opioid abatement trust, that has to go to thousands of local governments and tribes and states.

Again, there's buffer and buffers that we're thinking about; not because we don't understand, but because

we do understand.

But let me do the dummy math, because this is so important for people to hear, and then I'm done.

Assume, for a minute that the nominal value of the product cash flows and the residual value of the assets over the next nine years is $9 billion. Right, there's cash income generation, and then there's residual value.

At some point we just put a term and a value on things.

In a NewCo structure, all $2 billion of cash flow and residual asset value we believe can go right to abatement because we think we can structure it as a tax-free entity, even without any governmental ownership of any type.

But now -- again lawyer dummy math -- let's talk about the sale alternative. So let me put myself in the mind of a third party. Purdue's investment manager comes to me and says, hey, hedge fund guy, I'd like to sell you this $2 billion of cash flow and residual (indiscernible). So what do I do?

I open Excel and I say, well, first of all, I'm a taxpayer. Let's pretend that Georgia goes Republican and Biden can't raise the corporate tax rate to 32 percent, and I get the benefit of the current tax rate. So that's a state and local tax burden every year on my net income of 25 percent.

So the first thing I do on a PV basis is say about $300 million comes off because I don't get the 2 billion; I get 1.7. And I'm not even assuming a tax burden on the sales from 2029. I'm only assuming a tax burden on the cash flow. And then he says, okay, but I'm an investor, I'm a capitalist. I'm the person who's talking about investing hundreds of millions of dollars in a complicated asset. So you know what? I'm going to treat it like a regular asset, like a pretzel factory, and I'm going to see I need a 20 percent return on equity capital.

The way the math works, Your Honor, to generate a 20 percent return for nine years and be a tax-paying entity means you only pay five to six hundred million dollars up front for the pre-tax cash flow and residual value that in the hands of NewCo are $2 billion.

So issue number one for us, Your Honor -- and there are many, many more, but I just beg, beg, beg people to listen to it with an open mind, because we want what you want -- is that we lose possibly three-quarters of the value of the company to the profit-making need and the tax burden of a prospective purchaser.

And Your Honor, I treated it like a pretzel, not like (indiscernible) --

MR. PREIS: Your Honor --

MR. HUEBNER: -- (indiscernible) products.

MR. PREIS: Your Honor --

MR. HUEBNER: It has --

MR. PREIS: I'm sorry --

MR. HUEBNER: Sorry. I --

MR. PREIS: I don't know where this is going, and I -- but -- sorry, this is -- a number of people are listening to this and all asking the same question. I'm sorry --

MR. HUEBNER: Yeah, so it's a --

MR. PREIS: (indiscernible) but --

MR. HUEBNER: Yeah. (indiscernible) So let me say this, Your Honor. As I said, I was kind of done. So I'm going to be done now. I urged in my opening that people not make this an open mic on PBC versus sale. And that request was rejected. And several of the objectors went into speeches about what their position has been from the beginning on this versus that, and why this is (indiscernible) to them. That has nothing to do with the case law or the 9019 in front of us. So I will accept Mr. Preis' good advice, although I actually could say things to show you why the price on a risk-adjusted basis and a --

THE COURT: You should accept his advice.

MR. HUEBNER: Okay. I'm accepting it. So, let me wrap up in 10 seconds. At the end of the day, the case law is absolute and absolutely in favor of approving the 9019.

The Debtors are allowed to choose what they believe is in their best interests, the timing of what they believe is in their best interests, and the content of it.

Like every other creditor in the case, the United States is allowed to have preferences for the conditions that (indiscernible). This is no different than the hundreds, maybe thousands, of PSAs, RSAs, 9019s, cash collateral orders, DIP orders, that legions of cases, like (indiscernible) and Delphi and Empire and (indiscernible) and Chrysler have found legal.

I don't want to be distracted from where I started. This is a monumentally positive day for these estates and for the goal that we all share. And we very deeply and profoundly ask that the relief be granted.

THE COURT: Okay. All right. Okay, I --

MR. TROOP: Your Honor, it's Andrew Troop. Drew. I just have one request, that Mr. Huebner and the Debtors be as open-minded with regard to alternatives as they have asked us to be in connection --

THE COURT: That's a totally fair request. I understand that. And I'm assuming it'll be the case. I'll have --

MR. TROOP: Great.

THE COURT: -- some words about -- in my ruling on negotiations going forward.

MR. TROOP: Thank you, Your Honor. And if necessary, to have more discussions about the issues that Mr. Huebner raised and in recognition of his request that he -- which I think, frankly, everyone did honor --

THE COURT: Right.

MR. TROOP: - not to --

THE COURT: If anyone didn't honor it, it was me. But I think that's because I needed to understand what the concerns were about the recission right --

MR. TROOP: But all I'll say, Your Honor, is we're happy to talk with you about that in chambers with whoever wants to participate, if they'd like. Thank you.

THE COURT: Well, okay. Very well. All right. I have before me the Debtors' motion for approval of a settlement with the United States that's actually embodied in two separate agreements attached to the motion, the first being a plea agreement with Purdue Pharma LP, and the second, which is an exhibit, being a settlement agreement regarding the United States civil claims against the Debtors.

Certain provisions of those agreements have been clarified in the proposed form of order, and the record reflects that the United States is in agreement that, as modified by the order, the settlements are currently in place and that the order reflects the agreements with the

United States.

Settlements and compromises are a normal part of the process of reorganization and are strongly favored over litigation in the bankruptcy context. See Protective Committee for Independent Stockholders of TMT Trailer Ferry, F-E-R-R-Y, Inc. v. Anderson, 290 U.S. 414, 424 (1968). See also In Re Motors Liquidation Company, 554 B.R. 355, 364, 365 (Bank. S.D.N.Y. 2016).

It's also well established that a bankruptcy court is required to make an informed and independent judgment in determining whether a settlement is fair and equitable and should be approved. Again, see the TNT Trailer Ferry case, 390 U.S. 428.

Based on the framework announced by the Supreme Court in TMT Trailer Ferry and the analysis that the Court undertook, courts in this circuit have concluded that a settlement to warrant approval by the court must first be on notice on the opportunity for a hearing, that it must be fair and equitable, and in the best interests of the estate.

Further, because a settlement, of this nature at least, is an action out of the ordinary course, and the use of the Debtors' property out of the ordinary course, it also has to be a valid and good business decision.

It is also established in this court that because of the role that settlements play in the bankruptcy process,

a bankruptcy court's approval of a settlement is reviewed "extremely deferentially", because a bankruptcy court is in the best -- and this is a quote -- "A bankruptcy court is in the best position as the ongoing supervisory court for the bankruptcy case to determine whether a compromise is in the best interests of the estate and is fair and equitable." See In Re Liu, L-I-U, 1998 U.S. App. LEXIS 31698, 2 (2d Cir. December 18, 1998); DeBenedictis v. Truesdale (In Re Global Vision Products) 2009 U.S. Dist. LEXIS 64213, 6-7 (S.D.N.Y. July 14, 2009); and In Re Purified Down Products Corp., 150 B.R. 519, 522 (S.D.N.Y. 1993).

Given the foregoing, courts, in reviewing proposed settlements, are guided by the following factors. As laid out in In Re Iridium Operating LLC, 478 F.3d 452, 462 (2d Cir. 2007). See also Global Vision Products v. Truesdale, 2009 U.S. Dist. LEXIS 64213, 13. They are, one, the probability of success should be issues that are being settled, being litigated, versus the present and future benefits of the settlement, without the delay and expense and risk of litigation and subsequent appeals.

The likelihood of complex and protracted litigation if a settlement is not approved with its attendant expense, inconvenience and delay, including the difficulty in collecting on a judgment. Three, the interest of creditors, including the degree to which creditors

support the proposed settlement. Four, whether other interested parties support the settlement. Five, the competency and experience of counsel supporting and the experience and knowledge of the Court in reviewing the settlement. Six, the nature and breadth of the releases to be obtained by officers and directors, if any. And last, seven, the extent to which the settlement is the product of arms-length bargaining.

In bankruptcy cases, certain settlements, as is the one before me, don't involve litigation whereby a debtor is looking to recover on a judgment, but rather, is looking to minimize liability or the adverse effect of a claim on its estate creditors and reorganization prospect.

There are further limitations on settlements, beyond consideration of the following seven factors, and the ultimate determination as to whether the settlement is fair and equitable and in the best interest of the estate and the proper exercise of business judgment. Namely, whether a particular settlement's distribution scheme complies with the Bankruptcy Code's priority scheme must be the most important factor for the Bankruptcy Court to consider. In Re Iridium Operating LLC, 478 F.3d, 464.

In addition, in rare and extreme circumstances, a settlement may cross the bounds of settling the issues to fixing the terms, or at least certain key terms, of a

Chapter 11 plan without the benefits of a Chapter 11 plan process with a disclosure statement, subject to notice and approval by the Court, voting, and ultimately a confirmation hearing. However, as noted by the case law, those circumstances are generally extreme and rare. See In Re Tower Auto Inc., 342 B.R. 158 (Bankr. S.D.N.Y. 2006), aff'd 2006, U.S. Dist. LEXIS 91958 (S.D.N.Y. Dec. 1, 2006), aff'd 648 Fed. App'x 277, 284-85.

Here, most of the TMT Trailer factors are uncontroverted and support the settlement. Generally speaking, the settlement is favorable to the Debtors in that it substantially compromises the criminal rights or criminal claims of the United States, and further compromises the United States' civil claims.

The settlement would reduce and fix the criminal claims, as asserted in the United States' proofs of claim to a $2 million forfeiture claim from a potentially greater amount asserted, and that is a $3.5 million forfeiture claim, and a $3.544 billion civil fraud claim compromised from a $6.2 billion civil fraud claim.

Similarly, settlement would fix the civil claims of the United States at a substantial reduction to $2.85 billion from the remaining amount, roughly $8.3 billion -- excuse me -- yes, $8.3 billion remaining amount of the portion of the United States claim in this case for such

liability.

It is clear from the record before me today that the settlement amounts, both on the civil side and on the criminal side, facilitate the Debtors' reorganization and enable the Debtors to move ahead with a plan generally consistent with the allocation agreements previously negotiated in the Phase 1 portion of the mediation, and the agreement in principle with the so-called consenting states and governmental entities group. And I will address that further in my ruling later.

The settlement provides that the $2 billion civil forfeiture claim, if a plan is confirmed consistent with the terms of the settlement, would be modified by a credit to the public claimants of most of that to billion dollar amount, namely $1.725 billion worth, which would they be free, or freed up from payment to the United States, to instead be allocated as per the Phase 1 mediation to the states and non-federal government entities.

Only $225 million of cash would be required to be paid to the United States as part of that portion of the settlement. This is a relatively low amount in regards to the overall estate value, and again, facilitates a plan on behalf of the other parties in interest in the case.

That result is not the only possible result under the settlement. The settlement also provides that both the

Debtors and the federal government have the right to rescind the settlement if a plan is not confirmed that provides for the reorganization of the Debtors' estate in a public benefit corporation or similar structure, which the record has made clear is, I believe, deliberately vague, but with the ultimate goal of maximizing the value of the Debtors' estate to abate the opioid crisis.

If such a plan is not confirmed in addition and another plan is confirmed that does not provide for such treatment, the United States also has the right, if it doesn't rescind, to have that $2 billion claim paid as a superpriority administrative expense.

The settlement has been completely clarified, however, to make it clear that the allowance, including, as I just described it, of the criminal claims of the United States is not to occur and is conditioned upon confirmation of a Chapter 11 plan in this case. As a practical matter, that's how the revised order works.

The claims that are being settled, again, fall into two baskets, criminal and civil. And the criminal basket includes a criminal forfeiture claim. There is a, I believe, clear precedence, that is, for the proposition that a civil forfeiture claim sought for the direct assets at issue would not be treated as property of the Debtors' estate, even if the judgment in respect of that claim was

entered, as would be the case here, after the commencement of the Chapter 11 case, as discussed in, among other cases, the Drier decision by Judge Bernstein, D-R-I-E-R, discussed in the Debtors' motion papers.

The courts are divided over whether a forfeiture claim with respect to substitute assets has that level of status, at least in the Second Circuit, and there's a division in the case law throughout the country. And the Second Circuit has specifically not addressed that issue, as noted in United States v. Egan, 654 Fed. App'x 520 n.1 (2d Cir. July 8, 2016).

Of course, in determining a settlement, the bankruptcy judge doesn't have to know the answer to a question like that where there are substantial grounds for dispute. The judge really needs to understand the issue and decide whether the settlement is fair in the light of the issue. See, for example, the discussion in Ad Hoc Adelphia Trade Claims Committee v. Adelphia Communications Corp., 337 B.R. 475, 477, 378 (S.D.N.Y. 2006), aff'd, 224 Fed. App'x 14 (2d Cir. 2006), where the Court was discussing an open issue regarding the possible treatment of a government claim and noted the government's negotiating leverage. See also, for example, In Re Residential Capital, LLC, 497 B.R. 720, 752 (Bankr. S.D.N.Y. 2013).

In addition to having a forfeiture claim that's

being settled for substantially less than base amount of the claim, the Federal Government also has substantial rights inherent in its criminal enforcement power, including precluding all of the debtors from continuing in business, or effectively continuing in business, by cutting off access to Medicare and Medicaid reimbursement, and the like.

So on the merits of the claims and the dispute with respect to them, it appears clear to me that the settlement satisfies the first and second Iridium factors. Clearly the counsel that negotiated this settlement is highly experienced in this area. And the settlement also appears to me to be the product of arms-length bargaining. And that has not been challenged in a meaningful way.

It has been suggested -- and I have no reason to doubt it -- by one of the objectors that the DOJ did not meet with individual victims, or at least the objector individual victims of the alleged misconduct while negotiating a settlement. But as I noted during oral argument, my review is not one of the DOJ's conduct, but rather the fairness and reasonableness and equitable nature of the settlement from the perspective of the Debtors, their estates, and other parties in interest in these cases.

As far as the factor of the interest of creditors is concerned, clearly, not all parties in interest support this settlement. There are currently two objections to the

settlement by parties in interest in the case. First, an objection by the so-called non-consenting states, and that is obviously a significant group of 25 states representing a substantial portion of the U.S. population, as well as a relatively small group, but nevertheless an objecting group, of individual claimants.

One objection to the settlement has been resolved, and importantly resolved by clarifying language in the order that I've already mentioned, that resolves that objector's concerns. And they were somewhat legitimate concerns over whether the settlement, as drafted, either improperly treated the Federal Government's claims as allowed claims or did so in a way that precluded the confirmation of a plan that would provide for different treatment.

As I noted, at this time it's crystal clear, and as provided for in the order, that although the settlement agreement provides for an allowed superpriority claim for the forfeiture claim, that claim is not allowed until after a plan is confirmed in the case.

Secondly, the order makes it crystal clear that if the settlement is rescinded, the right to not have the stay in the bankruptcy case apply is confined essentially to Section 362(b)(4). It does not apply to monetary enforcement, for example, but simply to liquidating a judgment, consistent with 362(b)(4).

The objecting parties are not objecting as to the amount of the agreed upon claim, but rather assert that the settlement's provision that provides that the government has the option to rescind the agreement if a plan is confirmed that does not include a public benefit company structure, or similar structure in it, or alternatively, the risk that if it doesn't rescind the settlement it will then have a $2 billion superpriority claim, warrants the denial of the settlement.

The Unsecured Creditors' Committee has argued that rather than denying the settlement, the hearing should be adjourned until the parties can better negotiate the terms of what that provision means, i.e., what an acceptable public benefit corporation or similar exit structure would be before the issue is further joined. Of course, the non-consenting states recommend such an adjournment too, but state that if there is no such adjournment, the motion should be denied, which the Creditors' Committee does not assert.

The argument for denial of the motion is really twofold. First, the objectors argue that this term, which I have described, turns this settlement into the rare and extraordinary instance where the settlement is not just a settlement, but is also a so-called sub rosa plan, or it has sufficient features of a plan that it should not be approved

without going to the plan confirmation process.

I have also considered whether the rights of either the Federal Government, on the one hand, to rescind the settlement, or the rights of the non-consenting states in their Phase 1 mediation settlements with the non-public entities to rescind those agreements regarding allocation, in the event that the treatment of the Federal Government's claims in this case are not reasonably satisfactory, also would argue under the business judgment standard that the settlement should not be approved, i.e., that the settlement would create such uncertainty regarding those important issues in the case that the merits of the settlement are outweighed by the additional uncertainty created on the settlement.

I considered both of those possible arguments to deny the motion carefully. Let me deal first with the so-called sub rosa plan argument.

The sub rosa doctrine is one that is case law-driven ultimately, recognizing the differences between a Chapter 11 plan on the one hand, and an action taken out of the ordinary course, including a settlement, on the other. And again, as noted by Bankruptcy Judge Gropper and then affirmed by Judge Berman, and then ultimately by the Second Circuit, "In extreme circumstances, courts have refused to approve settlements or other transactions by a debtor, such

as the sale of all or substantially all assets, without the benefit of a confirmed plan or court-approved disclosure statement and without an adequate business justification." That's at Page 163 of 342 B.R. 158.

Judge Gropper then goes on to say at Page 164, "On the other hand, courts have approved even large and important settlements prior to confirmation of the plan, notwithstanding a sub rosa plan objection, where the settlement did not dispose of all of the debtor's assets, restrict creditors' rights to vote as they deemed it on a plan of reorganization, or dictate the terms of a plan of reorganization."

In that case, although the Court approved a settlement that allocated value to a certain set of creditors at a certain priority level, which therefore reduced other parties' rights to recover in a Chapter 11 case, the Court found that the transaction was not a sub rosa plan, and indeed, even though the debtor would be funding a replacement via the health insurance plan, it was a proper exercise of business judgment because, as Judge Gropper put it, and it was picked up on by the District Court affirmant, the debtor was actually getting rid of a white elephant, i.e., dealing with an important business problem in a reasonable and fair way that did not reflect the terms of a Chapter 11 plan.

The cases where a sub rosa plan argument has succeeded are actually quite limited, as opposed to courts having to consider whether those cases or that doctrine applies to the facts before them. It was raised and applied recently in two cases by my colleagues, which I believe are quite distinguishable.

First in In Re Miami Metals I, Inc., 603 B.R. 531 (Bankr. S.D.N.Y. 2019), actually, Judge Lane found that a proposed settlement that would dictate how sale proceeds would be allocated, including going so far as to potentially use non-estate property to pay estate claims, ran afoul of the sub rosa plan rule, and obviously, that's the appropriate result. The non-estate claimants were simply not at the table and the settlement was being negotiated on their backs.

The settlement also required a specific vote. I'm sorry. The settlement, although contemplated a subsequent plan, locked in the burdens of the settlement before that confirmation. So the benefits only came thereafter. Again, not an issue here, particularly as clarified by the proposed order.

Next, Judge Garrity, in In Re Latam, L-A-T-A-M, Airlines Group S.A., 2020 Bankr. LEXIS 2405 (Bankr. S.D.N.Y. Sept. 10, 2020), refused to approve a debtor-in-possession financing, again because, among other things, it violated

the sub rosa plan rule or principle, noting that the absolute priority policy of Section 1129 of the Bankruptcy Code, which governs confirmation of plans, was implicated by the proposed transaction of allocating upfront an option by the debtor, which was controlled by the party to the other side of the transaction, to provide shares in the reorganized company at a 20 percent discount to plan value to the DIP lenders. Again, a clear plan-like term.

In addition, unlike here, that term was built in, as there was a finding requested that that 20 percent discount was fair and fixed. Therefore, the Court was precluded from reviewing it in the context of a confirmation request, which, as noted, was months away, at least, if not longer. So, therefore, the facts could easily change.

And finally, that transaction provided that only the debtor plan had that option, and the failure to have that option in such plan would constitute an event of default under the DIP loan.

Whether all of those provisions added up to a sub rosa plan or only some of them is not entirely clear from the opinion. But it is clear that that insider transaction raised serious concerns in the Court's mind as to whether it crossed the line to actually fixing the terms of a Chapter 11 plan in stone.

I will also note that the Miami Metals case

considered a related plan support agreement to the settlement, where the terms of the proposed plan appeared to Judge Lane to raise important confirmation issues. And he did not view that problem in the context of a sub rosa plan argument, but rather in the context of a business judgment benefit of the estate argument, i.e., if the benefits of the settlement were only obtainable upon plan confirmation of a plan that on its face did not appear to be necessarily or easily confirmable, he was not going to approve it.

The Braniff Airlines case, In Re Braniff Airways, Inc., 700 F.2d 935 (5th Cir. 1983), also is one of few occasions where a court denied a proposed transaction on the sub rosa plan theory. But again, under those facts, the plan -- I'm sorry -- the proposed sale transaction did far more than sell substantially all of the assets of the business. It also dictated how the sale proceeds would be divided among the creditors and required a specific vote by secured creditors on their deficiency claim.

In contrast, in addition to the Tower Auto case that I've already cited, numerous courts have approved transactions or settlements that had a major effect on reducing the options available to creditors with regard to what type of reorganization they would have. And as noted by Judge Garrity in Latam Airlines Group case, it's well-established in this circuit, since the Lionel decision, that

if there is a good business reason to sell an asset that comprises substantially debtor's estate, it can be done. That is not a sub rosa plan. Although it does curtail the options available, because at that point, one is talking about allocating cash or other sale consideration, as opposed to stock in a reorganized entity.

More on point even that that here -- and I'll say that's on point, because one of the -- in fact, the only sub rosa plan argument that the objectors make is that the settlement may preclude -- or not even preclude -- it doesn't actually mandate, but it may effectively lead parties to negotiate a plan that contemplates a standalone public benefit, or similar type of immanent vehicle, as opposed to a sale -- a flip side of Lionel and its progeny -- but again, restricting that type of choice, as determined by the Second Circuit, as noted by multiple cases going back to Lionel and discussed specifically in Tower Auto and in Latam, is not approving a sub rosa plan.

In addition, there are at least two cases that have addressed the sub rosa plan issue in detail, flowing from the Southern District of New York, where there were government claims settled, where the proceeds were allocated one way under one set of potential future transactions or another way under other potential future transactions, and where the government settlement would be going to a

restitution fund to equity holders as a credit, and the Court nevertheless found that that settlement was not a sub rosa plan. The first being In Re Adelphia Communications Corp., which I've already cited, culminating in the affirmance of 224 Fed. App'x 14 (2d Cir. 2006), but beginning with 327 B.R. 143 (Bankr. S.D.N.Y. 2005) and the affirmance at 337 B.R. 475, and with the discussion at 477-78.

In addition, Judge Cote addressed the sub rosa plan argument in DeBenedictis v. Truesdale, In Re Global Vision Products, 209 U.S. Dist. LEXIS 64213. In that settlement, the Chapter 11 trustee agreed to a settlement, which was a settlement with a class holding false advertising claims. The settlement barred the debtor's future sale of concededly viable products, as found previously by an examiner that I appointed, in deference to the claimant's views that although the examiner found that those products, if properly marketed, would not violate applicable law or regulation. There was too much risk of future improper selling to warrant ongoing sales.

The settlement also set up a mechanism for pursuing futuristic claims whereby the claims were assigned to the settlement class, which in turn agreed to subordinate 50 percent of its recovery to non-insider creditors under a sharing formula thereafter.

At the trial level, I considered, and Judge Cote considered at the appellate level, an objection that said that that structure violated the sub rosa plan rule, citing, among other cases, In Re Lionel Corp., 722 F.2d 1063, 1071 (2d Cir. 1993), and noting that the settlement effectively put in motion the terms of a liquidation, as opposed to a going concern reorganization that was centered around future litigation.

The Court held, "The Court finds no similarity between the sub rosa plan in Braniff and the settlement agreement. The settlement agreement does not dictate the terms of a future plan. Rather, it provides for an undertaking by the trustee to propose a type of plan. Moreover, the settlement agreement does not prevent creditors from proposing their own plans, as the objectant has done. In addition, the settlement agreement does not restrict any rights afforded to creditors under the Bankruptcy Code, such as the right to vote on a proposed plan. It binds only the parties to the agreement."

And again, lastly, it does not mandate the subordination provided for in the agreement, which, as is the case here, with regard to the allowance of the claims, only comes into play when a plan providing for such subordination is confirmed. That distinction is made, as the Debtors point out in numerous cases, both in the Second

Circuit and elsewhere, including in the District Court opinion in Empire Generating cited in the parties' briefs.

It's just simply not the case that a major resolution in the case which limits people's options going forward, but does not (indiscernible) their rights after the vote on a plan constitutes a sub rosa plan. See also In Re Nortel Networks, Inc., 522 B.R. 491, 408-09 (Bankr. D. Del. 2014), and in the underlying decision in Iridium that I previously cited.

So it is clear to me that this settlement is not a sub rosa plan, at least as arguably modified, or at least clarified in the proposed confirmation order. That does raise finally, again, or lead to the other potential basis for the objection and the basis for the Creditors' Committee's request to adjourn the hearing for further clarification and negotiation among the parties regarding the meaning of the settlement's reference to a public benefit corporation, or other similar structure.

Obviously, if a settlement settling one set of problems opens up a set of other problems that outweighs the terms of the settlement, it shouldn't be approved. That was really what was going on in In Re Miami Metals I, Inc., 603 B.R. 531 (Bankr. S.D.N.Y. 2019).

This settlement does not resolve all potential related concerns that it raises, even as modified in the

proposed agreed form of order. It still leaves open the issue as to whether on the one hand, the Federal Government really would exercise its rescission right and revive the settlement of the claims that would be resolved by the settlement, which I think all parties agree is a settlement that is very much in the estate's and their favor, if a plan with a public benefit corporation or similar goal or structure is not confirmed.

Or alternatively, there is an open issue as to whether, A, the non-consenting states would exercise their right under the agreements that they had negotiated as part of Phase 1 mediation to rescind those agreements, if the treatment of the Federal Government's claims in this case is not reasonably satisfactory to them.

And there is a second level issue as to whether in litigation over such a potential rescission, it would be a reasonable action under the terms of the allocation settlements to take such a position.

I recognize that the use of the phrase "public benefit corporation", or similar structure, is vague. The tales of such an exit structure are not articulated in the settlement and have not been articulated at the hearing today. On the other hand, it is also clear to me that there is some benefit to that vagueness in that it creates a fair amount of flexibility on the parties' part to negotiate an

exit structure, as that would be reasonably acceptable to all parties, and not create the issues that I've just described.

Ideally, a court would want the parties to negotiate that issue in advance before such a settlement is approved. And I take seriously the non-consenting states' statement that they are prepared to do that, and that they have an open mind as to structures that might fit within that vague several word concept in the DOJ settlement agreement.

I actually had some concern whether they did have an open mind, which is why I engaged in a lengthy colloquy with Mr. Troop, their counsel, during oral argument. It appears to me that they do, and I believe that that is appropriate, given the fact that, as Mr. Huebner so well put it, there is no way, given that most of the revenue and value of these Debtors comes from OxyContin, that one can divorce payment in one form or another by these Debtors to alleviate, remediate and abate the opioid crisis without using that value in one form or another.

As noted in the recent history that I quoted during oral argument, David Herzberg, " White Market Drugs: Big Pharma and the Hidden History of Addiction in America", University of Chicago Press, 2020, there has always been a tension in how United States treated legal drugs, i.e.,

drugs that, if used properly, have a beneficial effect on people, but if used improperly, cause great harm.

Generally speaking, we have followed a regulation model, but there are problems with that model. There are conflicts, however one determines to realize value from these Debtors, or potential conflicts, that is, to abate the opioid crisis. If one sells the business, there is a potential for the buyer who wants to, obviously, make money out of that process to abuse the existing regulations.

There is a potential for conflict of interest if you simply tax the profits, because of course, you want higher taxes and, therefore, higher profits, and therefore, greed enters into the picture, and potentially leads to misuse, just as greed potentially and has historically led to misuse with regard to white market drugs throughout history in the United States.

And there is a potential conflict that even when one is merely the beneficiary of a trust, or a not-for-profit corporation, or a public interest corporation, that one could be accused in the press of being somehow responsible for some future misuse, albeit that one has done as much as one can in setting up a structure that ensures beyond regulation that such misuse will not occur.

So, I'm glad there's an open mind and I believe there should be, given that none of the alternatives is in

any way perfect.

Should I defer so that the matter can be discussed further as to how a structure can be set up that minimizes the conflicts and the risks of misuse going forward? There is a countervailing consideration beyond the important consideration of continuing momentum towards a confirmable plan in this case, and that is a concern that with regard to the criminal aspect of the claims asserted by the government, unlike the civil claims, the government apparently has discretion to change its mind and seek a far higher or different criminal remedy. That would be a big problem in this case.

I don't think the government will do that, but the risk to the Debtors' estates, even if that probability is low, is nevertheless very high, given the benefits of this settlement, which frankly, again, results in both guilty pleas and agreed facts, and almost 90 percent of the forfeiture amount going as a credit to the non-federal public entities to directly abate the opioid crisis under the government's wonderfully titled "No Piling-On" doctrine.

I'm not prepared to take that risk. I also say that because I believe that the risk of either the non-consenting states exercising their rescission right that I've already discussed, or the government acting contrary to a reasonable proposal that would have the so-called non-

consenting states' support for an exit structure, I believe is far lower, since both entities, which after all have the public interest as their guiding imperative, share an interest in resolving the opioid crisis, and using the Debtors' resources to the maximum to do that.

I trust, therefore, that they will act reasonably and actually go forward and negotiate a plan that has an appropriate exit structure, that puts the value of these Debtors' to maximum use for abatement purposes, with proper review and oversight, not by the states as owners, but by people who can be trusted to do so with proper corporate and trust governance procedures to ensure that they and their successors do so, and with suitable flexibility if a transaction that also furthers and actually improves upon devoting the Debtors' resources to abating the opiate crisis seems worth pursuing.

And weighing the perspective risks, it appears to me to be the case that knowing what would be reasonable behavior here argues that this settlement should be approved now, knowing that the parties will, in fact, negotiate in good faith going forward, as to not only the exit structure, but also the remaining issue, fundamental issue in this case, which is any settlement with the Sackler family members. I guess I will close by focusing on that point.

I view as an extremely important development in

this case not only Purdue's guilty plea to the felonies outlined in the settlement agreement, but also Purdue's agreement to the stated facts attached as the addendum to the agreement.

In addition, although as I've noted earlier today the separate DOJ Sackler family settlement is not one that I have jurisdiction over to approve under Rule 9019 of the Bankruptcy Code and the case law that I've already described, that settlement too has an extremely important addendum of agreed facts.

With those two documents, it would seem to me that as far as potential liabilities issues are concerned, the parties have enough to negotiate the third-party release claims now. I also believe, based on the agreement that was announced today, at the beginning of this very long day, that the Debtors and the Committee and non-consenting states have resolved the remaining privilege issues asserted by the Debtors, that the settlement of the estate claims against the Sacklers can be resolved now or in the imminent future.

There is every reason for the parties to focus over the next months on both sets of issues pertaining to the Sacklers and the emergent structure issues and reach an agreement. You have it at your command and you can do it, and you need to do it. If you are not able to do it with the help of some of the best, two the best mediators in the

country, then you'll never do it, and I will move on to considering other alternatives in this case.

I agree with, I believe, all the parties here, certainly the Creditors' Committee and the Debtors and the roughly 60,000 personal injury claimants, but I think all of the 48 states governmental entities have this view, that the DOJ settlement is a critical building block in this case. It has enough flexibility in it so you can negotiate the remaining open issue as to the exit structure.

And I know now that you will not do that on a simplistic basis, but take into account the fact that there is no completely conflict-free resolution here with any exit approach. Anyone who thinks contrary either isn't thinking straight or is just engaging in rhetoric, and this is not the time for that, if there ever is such a time. And I know now that that's not how the non-consenting states are thinking. They appreciate these issues. They told me that. So please, get it done.

The mediators have not asked me to impose a deadline, nor has anyone else except Mr. Shore. But again, it's my view -- and this is consistent with what we've been discussing throughout the last several months -- that these three issues can and should all be resolved over the next 30 days. We'll discuss it at the next omnibus hearing. Of course, I'm not privy to your mediations, but again, now is

the time, as the jazz song says, to please go and do it.

So, I will ask Mr. Huebner to email the final revised proposed order granting the motion to chambers. You should cc anyone who filed a pleading on this motion with a copy, as well as the U.S. Trustee and the so-called consenting and multigovernmental entity group's counsel.

MR. UZZI: Your Honor, it's Gerard Uzzi. May I just be heard, just for a moment?

THE COURT: Okay.

MR. UZZI: Your Honor, you just said something in your ruling which we appreciate a great deal, and obviously, are listening very carefully. But I just want to make sure there's no confusion in the record. I think you said that in connection with the Sackler family's settlement with the DOJ there was an agreed statement of facts. That is not the case. Those are allegations that are disputed much like factual allegations in a complaint. I just don't want the record to be confused on that point, Your Honor.

THE COURT: Okay. That is fair. I got that wrong. But you do have --

MR. UZZI: Thank you, Your Honor.

THE COURT: -- a very clear statement of facts by Purdue, and you have very clear allegations from the Federal Government, after a lengthy investigation that resulted in a settlement. To me, it's enough to negotiate a settlement of

the non-estate claims. I trust, at this point, or certainly in the very near future, there will be sufficient information to negotiate the estate claims too during the time period that I'd referenced.

MR. UZZI: Thank you, Your Honor.

THE COURT: Okay. All right.

MR. TROOP: Your Honor, as long as we're clearing things up, and I could be wrong, but on the Purdue settlement, I actually think that there are two documents that are attached. One includes certain admitted facts, and others include only alleged facts.

THE COURT: Right. I'm just focusing on the admitted addendum --

MR. TROOP: Thank you, Your Honor.

THE COURT: -- of the admitted facts. And again --

MR. HUEBNER: Your Honor --

THE COURT. I mean, I don't know what else you need. I really don't.

MR. HUEBNER: Your Honor, on behalf of the Debtors, let me say thank you, and thank you to everybody for the patience of staying on for seven and a half hours. We will get the order sent out exactly as the Court noticed. It will be in the form of Word that was filed earlier today. I think the parties already have it because it's on the

docket. But for the avoidance of doubt, we'll re-attach it when we send it to chambers. I'm sure that Mr. Brooks -- my copy of "White Market Drugs" is already on the way. I'm guessing others have ordered it as well. And we will try to be guided by all the wisdom, open-mindedness, flexibility and creativity that I think we can possibly muster. Because at the end of the day -- I'll say it one last time -- I genuinely, deeply believe we all have the exact same goals, every party in this case. And the question is just how can we figure out how to best and most expeditiously achieve them.

THE COURT: Okay. All right. I want to be clear. I'm not endorsing everything the author of that book says. But it's interesting. I mean, he actually says the government should own these companies. I guess --

MR. HUEBNER: Well, then Mr. Troop will probably be buying a copy of that.

THE COURT: Yes. But, of course, the government is in the healthcare business to some extent and it can't get away from it. So --

MR. HUEBNER: Yep, understand. And again, thank you one last time, Your Honor (indiscernible).

THE COURT: Okay.

MR. TROOP: Mr. Troop always likes a good read. My real question is whether Mr. Eckstein's hand is tire from

having been up for the last five hours.

MR. HUEBNER: Fair enough.

MR. ECKSTEIN: Just electronically.

THE COURT: All right. Thank you, all, very much.

ALL: Thank you.

(Whereupon these proceedings were concluded)

C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing transcript is a true and accurate record of the proceedings.

Sonya Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: November 19, 2020